

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL APPEALS NO.446 TO 454 OF 2021

(Against the judgment dated 30.11.2020 passed by the Balochistan Sub-Ordinate Judiciary Service Tribunal, Quetta in Service Appeals No. 02/2017, 07/2019, 09/2019, 10/2019, 07/2019, 09/2019, 10/2019, 07/2019 and 10/2019)

Bashir Ahmed Badini, D&SJ, Dera Allah Yar
Shuja-ud-Din
Abdul Qayyum and others

(In CAs 446, 453, 454/21)
(In CAs 447, 448 & 449/21)
(In CAs 450, 451 & 452/21)

.....Appellants

VERSUS

Hon'ble Chairman & Member of
Administration Committee and Promotion
Committee of Hon'ble High Court of
Balochistan
Nasir Khan Yousafzai and others
Nazeer Ahmed Khajak and others
Zafarullah Bazai and others
Hon'ble Chief Justice of Balochistan High
Court Quetta and others

(In CAs 446/21)
(In CAs 447, 450/21)
(In CAs 448, 451/21)
(In CA 449 & 452/21)
(In CAs 453 & 454/21)

...Respondents

For the Appellants:

Mr. Abdul Malik, ASC
Syed Rifaqat Hussain Shah, AOR
(in CAs.446, 453 & 454/2021)

Mr. Shams ud Din, ASC
(in CAs.447-449/2021)

Mr. Muhammad Rauf Atta, ASC
(in CAs.450, 451 & 452/2021)
(Via Video Link from Quetta)

On Courts Notice:

Mr. Ayaz Khan Swati, Addl.AG
Balochistan

For the Respondent No. 2

Mr. Rashid Mehmood, Registrar High
Court Balochistan & Mr. Arshad
Mehmood Addl. Registrar High Court
Balochistan (via video link from Quetta)
(in CA.446/21)

For the Respondent Nos.4,6 & 7	Mr. Muhammad Rauf Atta, ASC (in CA.446/21)
For respondents No.9-10:	Mr. Gul Hassan Tareen, ASC (in CA 446/21)
For the Respondent No.1:	Mr. Muhammad Shoaib Shaheen, ASC (in CAs.447 to 452/2021)
Remaining Respondent in C.As.	Nemo
Date of Hearing:	17.12.2021

JUDGMENT

MUHAMMAD ALI MAZHAR, J. - These Civil Appeals are directed against a common judgment dated 30.11.2020, passed by the learned Balochistan Sub-Ordinate Judiciary Service Tribunal, Quetta, whereby the aforesaid Service Appeals were disposed of with certain directions jotted down in Paragraph No. 25 of the impugned judgment.

2. The ephemeral chronicles and corpus of the aforesaid Civil Appeals are as follows: -

A. CAs.446,453 & 454 of 2021 (Bashir Ahmed Badini)

The appellant was initially appointed as Judicial Magistrate in 1997 pursuant to the recommendations of the High Court Committee of Balochistan, Quetta. His services were regularized with retrospective effect from 19.09.1997. He was further promoted to the post of Senior Civil Judge by the Departmental Promotion Committee on 10.02.2005 and on completion of 11 years of service, the appellant was promoted to the rank of Additional District & Sessions Judge on 10.02.2005 as an officiating charge and he was regularized on 31.03.2010. On recommendations of Departmental Promotion Committee, he was promoted to the rank of District & Sessions Judge vide Notification dated 15.05.2015. The Promotion Committee in its meeting recommended the case of private respondents No.1 to 12 (Judicial officers) for antedated promotion vide Notification dated 27.03.2017 which has been considered by the appellant in violation of service laws.

B. CAs.No.447, 448 & 449/2021 (Shuja-ud-Din)

The appellant has filed this appeal to impugn the judgment of learned Tribunal dated 30.11.2020 whereby the Service Appeal No.07/2019, filed by Mr.Nasir Khan Yousufzai before Balochistan Sub Ordinate Judiciary Service Tribunal Quetta was

allowed. According to the appellant, the learned Tribunal failed to consider that the seniority was assigned to the appellant in terms of the judgment of Tribunal dated 25.4.2016.

C. CAs.450, 451 & 452 of 2021 (Abdul Qayyum & others)

The appellants and respondent No.1 & 3 to 6 are District & Sessions Judges who were granted antedated promotion w.e.f. 15.05.2015 vide Notification dated 27.03.2017 issued in compliance of the judgment dated 25.04.2016. The respondent No.1 and others were aggrieved by the Notification dated 27.03.2017 as the appellants and respondents No.3 to 7 were ranked higher in the seniority list of District & Sessions Judges than the respondent No.1. The respondent No.1 had challenged the aforesaid seniority list and preferred Service Appeal No.7 of 2019 before the Balochistan Subordinate Judiciary Service Tribunal, which was accepted vide consolidated judgment dated 30.11.2020 hence the appellants have impugned the judgment of learned Tribunal.

3. Leave to Appeal was granted vide order dated 28.04.2021 in the following terms:

"C.P. No.270, 630 & 631/2021 (CA.446,453 & 454/2021)

Contention of the learned ASC for the petitioner is that in the final seniority list of District & Sessions Judges (BS-21) as stood on 02.09.2019 issued by the High Court of Balochistan, Quetta, the name of the petitioner appears at serial No.20 and pursuant to the impugned judgment, his seniority is likely to be affected, in that, his juniors are going to be made senior. (Emphasis supplied) Further contends that in deciding the matter before it, the Tribunal has omitted to consider the order of this Court passed in Civil Petitions No. 1678 to 1682/2016 on 20.06.2016 upon which the petitioner has got seniority according to his entitlement and such seniority is likely to be affected now pursuant to the judgment given by the Tribunal.

Submissions made require consideration. Leave to appeal is granted to consider, inter alia, the same.

C.P.No.43-Q, 44-Q & 45-Q/2021. (CA.447, 448 & 449/2021)

Learned counsel for the petitioner contends that the petitioner was granted promotion vide Notification dated 16.04.2018 from Additional District & Sessions Judge (BS-20) to the rank of District & Sessions Judge (BS-21) on regular basis with effect from 15.05.2015, the date when officers junior to him were promoted. He contends that the petitioner has no grievance against this very Notification but the petitioner was joined as respondent No.2 in Service Appeal No.07/2019 which was allowed by the impugned judgment. He contends that by allowing this service appeal, the petitioner is likely to be prejudiced, in that, his seniority will be affected which was given to him vide notification dated 16.04.2018. (Emphasis supplied)

Submissions made require consideration. Leave to appeal is granted to consider, inter alia, the same.

C.P.No.51-Q, 52-Q & 53-Q/2021 (C.A No.450, 451 & 452/2021)

Learned counsel for the petitioners contends that the petitioners were granted promotion vide notification dated 27.05.2017 from Additional District & Sessions Judge (BS-20) to the rank of District & Sessions Judge (BS-21) on regular basis with effect from 15.05.2015, the date when officers junior to them were promoted. He contends that the petitioners have no grievance against this very Notification but the petitioners were joined as respondents No.3, 5 and 6 in Service Appeal No.07/2019 which was allowed by the impugned judgment. He contends that by allowing this service appeal, the petitions are likely to be prejudiced, in that, their seniority will be affected which was given to them vide notification dated 27.05.2017. (Emphasis supplied)

Submissions made require consideration. Leave to appeal is granted to consider, inter alia, the same".

4. The learned counsel for the appellant in Civil Appeal No. 446/2021 argued that the seniority list dated 31.03.2016 was not challenged by any party within time. The antedated promotion to junior judicial officers (regular appointees) was without lawful justification. It was further contended that the Administration Committee had granted antedated promotions to the rank of District and Sessions Judge to the Respondents No. 3 to 7 in violation of Rules 7 and 9 of the Balochistan Additional District & Sessions Judges and District & Sessions Judges Services Rules, 2002 ('Balochistan ADSJs and DSJs Services Rules, 2002') as they did not possess the requisite length of service. So far as the Civil Appeals No. 453 and 454 of 2021 are concerned, the learned counsel for the appellants added that the impugned decision of the learned Tribunal in C.A.s No. 7, 9 and 10, filed by the Respondent No. 2 has seriously prejudiced the Appellant, who was placed junior. It was further contended that the Appellant had also challenged the antedated promotion in S.A. No. 02/2017 but it was dismissed by the learned Tribunal without any lawful justification. He further argued that the Balochistan High Court had advertised five posts for District and Sessions Judge for direct recruitment under the amended Rule 5(2) of the Balochistan ADSJs and DSJs Services Rules, 2002 which was violative of Articles 4, 8, 9, 25 and 27 of the Constitution of the Islamic Republic of Pakistan, 1973 and was prejudicial to the interest of Additional District and Sessions Judges who possessed the requisite period of service.

5. The learned counsel for the appellant in Civil Appeals No. 447, 448 and 449 of 2021 argued that the Respondent No. 4 had filed S.A. No. 01/2002 wherein it was declared vide Judgment dated 25.04.2016, that those Judicial Officers who came through the Public Service Commission ranked

higher in seniority, and that while executing the Judgment of the Tribunal dated 25.04.2016, the Administration Committee of the High Court, pursuant to the recommendation of the Promotion Committee, issued Notification dated 27.03.2017 whereby antedated promotions to the post of District and Sessions Judge were granted to five judicial officers. He further argued that Appellant is aggrieved by the impugned Judgment which failed to address the issue of the Appellant's inter-se seniority with respect to the Respondent No.1. The case of Appellant was simply of an antedated promotion which was effective from 15.05.2015 as per Rule 4(c) of the Balochistan Civil Servants (Seniority) Rules, 2008 and Rule 3(c) of the Civil Servants (Seniority) Rules, 1993.

6. The learned counsel for the appellant in Civil Appeals No. 450, 451 and 452 of 2021 argued that the seniority has been assigned to the Appellant and others in consonance with the Tribunal's Judgment dated 25.04.2016 which judgment had decided a number of appeals, each of which had distinct claims and causes of action and sought different relief and that the passing of a common judgment in such circumstances was not justifiable. The Appellant was appointed as District and Sessions Judge on 15.05.2015 and is four (04) days senior to the Respondent No.1 who was appointed as District and Sessions Judge via direct recruitment on 19.05.2015. The general principle of seniority is applicable which dictates that seniority shall be calculated from the date of regular promotion or initial appointment to that post and that the impugned seniority list of District and Sessions Judges dated 02.09.2019 has rightly listed the Appellant as senior to the Respondent No.1. It was next contended that all the promotions being outcome of the judgment of 25.04.2016 and appointment of all private respondents as direct District & Sessions Judges was unconstitutional and the petitioner may be declared senior and service rendered by private respondents who were appointed as direct District and Session Judge may kindly treated as Additional District & Sessions Judge from the date of their appointment.

7. The learned counsel for the Respondents No. 9 and 10 in Civil Appeal No. 446 of 2021 argued that they were not beneficiaries of the impugned Notification dated 27.03.2017 as they were not promoted in pursuance of the said impugned Notification. The Judgment of the Tribunal dated 25.04.2016 was upheld by this Court. The further agitation of the same issue is barred by the principle of res-judicata and Article 189 of the

Constitution of the Islamic Republic of Pakistan, 1973. The Appellant was not superseded vide the impugned Notification dated 27.03.2017, hence he is not an aggrieved person.

8. The learned counsel for the Respondent No.1 in Civil Appeals No. 447 to 452 of 2021 argued that as per Balochistan ADSJs and DSJs Services Rules, 2002, 15% quota was allocated for direct appointment of District and Sessions Judges, and 80% quota for promotion to the same post. On respondents' direct appointment to the post of District and Sessions Judge, a provisional seniority list dated 31.03.2016 was distributed to all the Judicial Officers and objections were invited, however, no objections were raised hence, at this stage, the appellants have no cause of action.

9. The learned Additional Advocate-General for Balochistan argued in relation to the C.A.s No. 446, 453 and 454 of 2021 (Bashir Ahmed Badini) that the seniority is to be reckoned from the date of regular appointment in terms of Rule 4 of the Balochistan Civil Servants (Seniority) Rules, 2008. The amended Rule 9 of these Rules prescribes the same criteria when dealing with the inter-se seniority of civil servants appointed in the same calendar year as prescribed in Rule 8(4) of the Balochistan Civil Servants Act, 1974. The judgment of learned Tribunal dated 25.04.2016 was challenged before this Court which was upheld vide Judgment dated 20.06.2016. The appellants who were ad-hoc appointees cannot agitate the same issue again. So far as the Appellant in C.A.s No. 450, 451 and 452 of 2021 (Abdul Qayyum) is concerned, the learned A.A.G argued that the Appellant was a regular appointee who was allowed antedated promotion to the post of District and Sessions Judge on regular basis on 15.05.2015 on the strength of the Judgment dated 25.04.2016 and his name was placed above the names of the direct appointees that were appointed by way of initial recruitment on 19.05.2015 in accordance with the relevant provisions of law. So far as the case of Appellant in C.A.s No. 447, 448 and 449 of 2021 (Shuja-ud-Din), the learned Additional A-G articulated that the Appellant's case for promotion to District and Sessions Judge was deferred by the Promotion Committee, however after his promotion, he was assigned seniority as he was enjoying in the lower post. It was further contended that the Learned Tribunal has passed the impugned judgment after considering the pros and cons of the case. He also referred to the case in point pleaded by the Registrar before the learned Tribunal that after regular appointment, promotion was accorded

as regular employees. The antedated promotions were granted w.e.f. 15.05.2015 on the basis of Judgment dated 25.04.2016 passed by the learned Tribunal. The seniority positions have been assigned to the Judicial Officers strictly in accordance with Rule 4 of the Balochistan Civil Servants (Seniority) Rules, 2008, which envisages that the seniority in a service, cadre or post shall take effect from the date of regular promotion to that service, cadre or post. The assignment of seniority to Judicial Officers was principally as a result of implementation of the Judgment of the Tribunal which had an overriding effect over the Rules and further that seniority was also determined from the date of regular appointment in the respective posts or cadre.

10. Heard the arguments. The survey and appraisal of record divulges that five Service Appeals i.e. No.1/2002, 6/2015, 7/2015, 8/2015 and 9/2015 were filed by some Judicial Officers of Sub-ordinate Judiciary wherein they sought declaration that the rules prescribed for regularization of service were prospective in character and cannot be given retrospective effect and the ad hoc period of the respondents cannot be counted for the purposes of determining seniority. It was further averred that the regularization of the respondents in the said appeals with retrospective effect was in violation of the rules for recruitment. All the aforesaid appeals were heard together and disposed of vide Judgment dated 25.04.2016 in which the learned Tribunal also reproduced the Notification dated 10.12.2001 whereby the Administration Committee of High Court of Balochistan was pleased to regularize the Ad-hoc appointment of some Additional District & Session Judges, Judicial Magistrates, Civil Judges and Qazis on completion of two years satisfactory service from the date of their Ad-hoc appointment. The moot and crucial question before the learned Tribunal for consideration was whether the appellants, who were appointed as Judicial Magistrate on the recommendation of Balochistan Public Service Commission, could be declared Junior to the private respondents who were selected on Ad-hoc basis. So far as the Service Appeal No.1 of 2002 was concerned the learned Tribunal held that the appointing authority may make ad-hoc appointments and subsequently regularize such appointments but not with retrospective effect. While in Service Appeal No.6,7,8 and 9 of 2015 the learned Tribunal held that the appellants in the said appeal were appointed on regular basis on the recommendations of BPSC prior to the regularization of the private

respondents. Finally the aforesaid appeals in the first round were disposed of *vide* order dated 25.04.2016 in the following terms: -

22. "For the above reasons, without setting aside the impugned Notification as a whole, the appellants in all the service appeals as well as non-appealing Judicial Officers, who were also appointed on regular basis, prior to the regularization of ad hoc services of the private respondents, are hereby declared senior to the private respondents, whose ad hoc services were regularized retrospectively in sheer violation of all recognized canons of law and proprietary. [Emphasis supplied] After declaring the appellants as well as non-appealing Judicial Officers as senior to the private respondents, their cases are referred to the Administration Committee of the High Court of Balochistan for consideration of their promotion to the next grade from the date when the respondents were promoted".

11. The aforesaid order was challenged in this Court *vide* Civil Petitions Nos.1678 to 1682 of 2016 which were dismissed and leave was refused on 20.06.2016 with the observation that determination of seniority being regulated by Section 8 of the Civil Servants Act and the Rules made thereunder, could not be over turned by such notifications nor could Ad-hoc appointees be given an edge over the regular appointees in terms of seniority. After refusing leave, Civil Review Petition No. 326 to 330/2016 were filed but *vide* order dated 26.09.2016, the Review Petitions were also dismissed. Finally, in order to comply with the directions given in the Judgment of the learned Tribunal dated 25.04.2016, the Registrar of Balochistan of the High Court issued a Notification on 27.03.2017 whereby antedated promotions were granted to 13 Judicial Officers. The Notification depicts that in the first category, the matter of five District & Sessions Judges were discussed and after taking into consideration their dates of appointment, they were allowed antedated promotion as Senior Civil Judge, Additional District Judge and District & Session Judge. The breakup of their service period for antedated promotion is mentioned separately in the Column No.3 of the Notification. The next category was for Additional District & Sessions Judges in which the matter of two Judicial Officers was discussed and they were also allowed antedated promotion from Senior Civil Judge to Additional District Judge and the breakup of the services rendered by them in each category is also mentioned. In the last category, five Senior Civil Judges were considered and they were also granted antedated promotion with the effective date as mentioned in the same Notification in compliance of the order passed by the learned Tribunal.

12. When the aforesaid Notification was issued again 13 Service Appeals were filed before the Balochistan Sub-Ordinate Judiciary Service Tribunal. After hearing the pros and cons, the learned Tribunal, without setting aside the impugned Notification or the impugned seniority list, disposed of all the Service Appeals in terms of Paragraph 25 of the impugned Judgment which is as follows:-

"25. Again, reverting to the fate of these pending appeals, since we being the members of this Tribunal, and being integral part of Administration of the High Court of Balochistan are well aware about afore-narrated anomalies created during the afflux of time for which no one can be held responsible in his/her individual capacity. Similarly, in case of completely setting aside the impugned Notification or impugned seniority list, would also create an absurd situation, which will ultimately lead to an endless chaos, and would further create an uncertain state of confusion and dilemma. Therefore, for these obvious reasons, we, while without setting aside the impugned Notification No.1207/120-Estt: dated 27th March 2017 and the impugned seniority list, hereby declare as under:

i. This Tribunal's judgment dated 25th April 2016 passed in Service Judicial Appeal No.01 of 2002, being rem in nature, shall be implemented in letter and spirit.

ii. Service Judicial Appeal Nos.02 & 03 of 2017, respectively filed by the appellants viz. Bashir Ahmed Badini, Muhammad Jamshed and Nouroz Khan Hoth are dismissed being frivolous and misconceived.

iii. Service Judicial Appeal Nos.10 & 11 of 2020, respectively filed by the appellants, Rahim Dad Khilji and Abdul Ali Jalalzai are partly dismissed upto the extent of claim for back benefits. However, upto the extent of supersession are partly accepted and remanded for de-novo consideration by the Promotion Committee.

iv. Service Judicial Appeal Nos.01, 04, 05, 09 & 10 of 2017 and 09 of 2020 filed by the appellants, Abdul Hafeez, Inayatullah, Najeebullah, and Muhammad Afzal are partly accepted and their cases are remanded back to the Promotion Committee for de novo consideration.

v. The Service Appeal Nos.07, 09, & 10 of 2019 filed by the appellants, Nasir Khan Yousafzai, Nazir Ahmed Khajak and Zafarullah Bazai are accepted.

vi. Till final decision on this declaration, the Judicial Officers irrespective of their grade, seniority on basis of already granted antedated promotions, supersession of the affected judicial officers, shall neither be changed, nor should any representation either pending or already filed be decided".

13. According to Section 8 of the Civil Servants Act, 1973, for proper administration of a service, cadre or post, the appointing authority is required to make out a seniority list of the members, but no vested right is

conferred to a particular seniority in such service, cadre or post. The letter of the law further elucidates that seniority in a post, service or cadre to which a civil servant is appointed shall take effect from the date of regular appointment to that post, whereas Section 9 is germane to the promotion which prescribes that a civil servant possessing such minimum qualifications as may be prescribed shall be eligible for promotion to a higher post under the rules for departmental promotion in the service or cadre to which he belongs. However if it is a Selection Post then promotion shall be granted on the basis of selection on merit and if the post is Non-Selection Post then on the basis of seniority-cum-fitness. A quick look and preview of Rule 8-B of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 ('1973 Rules') shows that an Acting Charge Appointment can be made against the posts which are likely to fall vacant for a period of six months or more which appointment can be made on the recommendations of Departmental Promotion Committee or the Selection Board. The acting charge appointment does not amount to an appointment by promotion on regular basis for any purpose including seniority and also does not confer any vested right for regular promotion to the post held on acting charge basis. Under Rule 18, the method of making Ad-hoc Appointments is available with the procedure that if any post is required to be filled under the Federal Public Service Commission (Function) Rules, 1978, the appointing authority shall forward a requisition to the Commission immediately. However, in exceptional cases ad-hoc appointment may be made for a period of six months or less with prior clearance of the Commission as provided in Rule 19 wherein if the appointing authority considers it to be in public interest to fill a post falling within the purview of Commission urgently pending nomination of a candidate, it may proceed to fill it on ad-hoc basis for a period of six months. The reading of Balochistan Civil Servants Act, 1974 also reveals that the provisions made under Section 8 are similar to that of Civil Servants Act, 1973. Here also in Section 8, it is clarified that the seniority in the post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post and the criteria for promotion is also laid down with like prerequisites for the selection post and or non-selection post as provided in Civil Servants Act, 1973. So far as ad-hoc and temporary appointments are concerned, Rules 16 to 18 of Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009 also enlightened that in case a post is required to be filled through Commission, the Administrative Secretary of the Department shall forward

a requisition in the prescribed form to the Commission, however, when an Administrative Department considers it to be in public interest to fill in a post falling within the purview of Commission urgently, it may, pending nomination of a candidate by the Commission, with prior approval of the competent authority, proceed to fill such post on ad-hoc basis for a period not exceeding six months by advertising the same. The Acting Charge appointment is encapsulated under Rule 8 with the rider that appointment on acting charge basis shall neither amount to a promotion on regular basis for any purpose including seniority, nor shall it confer any vested right for regular promotion to the post held on acting charge basis.

14. Though the impugned judgment has been passed by the learned Subordinate Judiciary Service Tribunal, Balochistan on 30.11.2020, it is apparent that during hearing of appeals it was brought into the knowledge of the learned Tribunal that the Draft Bill of Balochistan District Judicial Act, 2020 was forwarded to the government for placing it before the Provincial Assembly for enactment. After the aforesaid judgment, the Balochistan District Judicial Act, 2021 was also promulgated and notified in the Balochistan Gazette on 16.02.2021 in order to regulate the service of Balochistan District Judiciary. Incidentally Section 8 of this Act is also related to the seniority which is more or less similar to the provisions made in the aforementioned civil servants laws, however, for dealing with matters of promotion it is expounded in Section 9 of the same Act that a person in service possessing such minimum qualifications as may be prescribed shall be eligible for promotion to a higher post in the service and such post may either be a selection post or non-selection post to which promotion shall be made in the manner as may be prescribed. Sections 23 to 27 of this Act in Chapter 3 are related to the functioning of the Services Tribunal, as well as the powers of hearing appeals and review applications and, in line with Section 37, this Act has repealed the Balochistan Subordinate Judiciary Service Tribunal Act, 1989. We have also examined the Balochistan ADSJs and DSJs Services Rules, 2002, notified on 15.11.2002 in exercise of powers conferred by Section 25 of the Balochistan Civil Servants Act, 1974. In Rule 5, method of recruitment of Additional District & Sessions Judges as well as the District & Sessions Judges is provided but for ad-hoc appointment, the Chief Justice has to advertise the posts and after selecting suitable candidate, may make appointment on ad-hoc basis. The inter-se seniority is to be maintained in

terms of Rule 9, which makes it quite obvious that if a junior officer in a lower grade is promoted to a higher grade temporarily in the public interest, even though continuing later permanently in the higher grade, it would not adversely affect the interest of a senior in the fixation of his seniority in the higher grade, and if a junior officer in a lower grade is promoted to a higher grade by superseding a senior officer and subsequently that officer is also promoted for the same post, the officer promoted first shall rank senior to the officer promoted subsequently.

15. It is a well settled principle that eligibility itself is not the benchmark for promotion, rather the most vital yardstick is fitness, which can be judged from the service record which includes ACRs, qualification, length of service in a particular grade/scale, integrity, knowledge and proficiency in the work/assignments, all of which are essential dynamics for weighing and appraising the merits for promotion to the selection post which is quite common procedure and practice articulated under the law for considering the promotions on merit. In the case of Muhammad Anis and others Vs. Abdul Haseeb and others (PLD 1994 SC 539), this court held that the question of eligibility is different from the question of fitness. Indeed, from the definition of the words "eligible" and "fit" given in the dictionaries, it appears that the meanings of above two words are interchangeable and at times they carry the same meanings but at the same time they have different meanings. The question whether a person is legally qualified for appointment or promotion to a particular post and grade is relatable to the factum whether he possesses the requisite qualifications for consideration, whereas the question of fitness pertains to the competency of the person concerned, which is to be decided by the competent authority. The question of fitness of their being appointed is to be determined by the functionaries mentioned therein. In other words a person may be eligible for consideration for a particular post, but may not be fit to be appointed. Further, in the case of Muhammad Rahim Khan Vs. The Chief Secretary, N.W.F.P. and 4 others (1999 SCMR 1605), this court held that the concept of eligibility implies a qualification to be appointed or promoted, whereas that of fitness encompasses a person's competence to be chosen or selected for appointment or promotion. The tests for eligibility are objective and open to scrutiny by a judicial forum. However, even in the matters involving fitness to be appointed or promoted to a particular post or grade there has to be necessary material on the basis of which an opinion, one way or the other, is to be formed.

16. It is also well settled exposition of law that the services rendered by the employees on ad-hoc basis prior to their regularization cannot be counted for the purpose of their seniority but their seniority will be counted from their substantive/regular appointments. In the case of Director-General Intelligence Bureau, Islamabad and others Vs. Amir Mujahid Khan and others (2011 SCMR 389), it was held that the "seniority" in the grade to which a civil servant is promoted is to take effect from the date of regular appointment to a post in the grade. It is also settled principle of law qua the question of conferring seniority with retrospective effect that it cannot be done unless such right was established. [Ref: Fasihuddin Siddiqui's case (1998 SCMR 637), Muhammad Yousaf's case (1996 SCMR 1297), Rustam Khan's case (1994 SCMR 1957), Muhammad Zakir Khan's case (2004 SCMR 497), Jehangir Mirza's case (PLD 1990 SC 1013), Wajahat Hussain's case (PLD 1991 SC 82), Sh. Anwar Hussain's case (1985 SCMR 1201), Muhammad Yousaf's case (1996 SCMR 1297) and Nazeer Ahmed's case (2001 SCMR 352=2001 PLC(C.S.) 394)].

17. The word "**Ad hoc**" is a Latin phrase which connotes in essence "**to this**". In the English language, it is commonly and generally put forward as an egress for a particular objective or errand. This axiom in effect describes the transitory or short-term or provisional ways and means to take care of a specific setback or difficulty in the event of any exigency or necessity for a specified period as a stop gap arrangement which also calls an action on adhocism. To all intents and purposes, the appointment on ad-hoc position is a stopgap arrangement or as a temporary solution till the post is virtually filled on regular basis in accordance with the rules of recruitment, therefore, the ad-hoc employees cannot claim precedence in seniority over the regularly appointed employees but their status will be reckoned with their batch mates and after regularization their seniority will be fixed accordingly. At this juncture we are reminiscent of a famous phrase "Birds of a feather flock together" which is quite common in everyday speech. This maxim is used to refer to semblances, evenness and similarity within a group of people who are allowed to connect and feel protected and sheltered around one another. The persons lean towards confederation and in league with those who share common interests or standards and similar characters and people tend to associate with each other. Whereas the turn of phrase "**antedate**" is also derivative and

offshoot of a Latin word “**ante**” denoting an older date than precede in time, predate or to assign an earlier date to antedate any event. The catchphrase “**Ad-hoc**” and “**Antedate**” have been defined in some law dictionaries as under:-

Black’s Law Dictionary- Ninth Edition. **Ad hoc.** Formed for a particular purpose [the board created an ad hoc committee to discuss funding for the new arena]. **Antedate** 1. To affix with a date earlier than the true date; Backdate. To precede in time.

Wharton’s Concise Law Dictionary- by Justice V R Krishna Iyer. **Ad hoc-** The meaning to be assigned to the terms “ad hoc” while interpreting provisions of a service rule will depend on the provisions of that rule and the context in and the purpose of which the expressions are used, Rudra Kumar Sain v. Union of India, (2000) 8 SCC 25. **Antedate.** To date a document before the day of its execution. Means to affix with a date earlier than that true date e.g. antedate a check. To precede in time e.g. the doctrine antedates the Smith case by many years, Black Law Dictionary, 7th Edn., p.91.

Legal Thesaurus- Regular Edition. William C.Burton. **Ad-hoc.** Extemporaneous, for the sake of, for this case alone, improvised, in consideration of, on account of, special Associated Concepts: ad hoc appointment, ad hoc committee. **Antedate.** Affix an earlier date, anachronize, assign to an earlier date, date back, date before the true date, date before the true time, date earlier than the fact, foredate, predate, set an earlier date, transfer to an earlier date.

Words and Phrases Permanent Edition- Volume 2- Antedate- To antedate an insurance policy means to make it, for the purpose of fixing maturity dates for premiums, relate back to and take effect as of a time prior to its delivery. New York Life Ins. Co. V. Franklin, 87 S.E. 584, 586, 118 Va. 418.

Pramanatha Aiyar- The Major Law Lexicon- The Encyclopaedic Law Dictionary with Legal Maxims, Latin Terms and Words & Phrases. **Antedate-** To date before the true time; to give an earlier date than the real one; thus, to antedate a deed or bond is to give to it a date anterior to the true time of its execution. To put on a document, e.g. a cheque or invoice, a date which is already past. See also postdate. (Banking)

18. In the case of Abu Bakar Farooq v Muhammad Ali Rajpar (2019 SCMR 830), this court held that in some cases, the ad hoc appointment is prolonged for years altogether either for ulterior motives or by convenience in gross violation of Rule 19 of the 1973 Rules as well as Rule 3 of the Federal Public Service Commission (Functions) Rules, 1978, and such prolonged ad hoc appointment may lure the appointee to continue with the full knowledge that this marriage of convenience would ultimately break to his detriment, for such ad hoc appointment does not create any right in favour of the incumbent to compel the authority to regularize his appointment. It was further held that neither the ad hoc employee has right to hold the post beyond the period for which he was appointed nor the government has a right to continue with such ad hoc appointees for

such a long period. This situation arises only when the government violates the provision of Rule 3 of the Federal Public Service Commission (Functions) Rules, 1978 and, without placing a requisition before Commission for regular appointment, fill the post on ad hoc basis and then keep on extending the period of such ad hoc appointment and the ad hoc appointee knowing fully well that his ad hoc appointment is not in accordance with the prescribed method of appointment and is only a "stop gap" arrangement, till recruitment in accordance with the prescribed method of Appointment is made, clings to such post. In the same judgment, the Court also referred to the case of Muhammad Afzal v. Government of the Punjab (1982 SCMR 408) in which it was held that if the appellants and some of the respondents were truly ad hoc appointees for a certain period they cannot on the basis of Rules claim their seniority from that date whether it was continuous or not. This court in the case of Naila Khalid v. Pakistan (PLD 2003 SC 420), held that the Ad hoc appointment of a person does not confer any right or interest to continuous appointment, seniority, or promotion till a person is regularly selected by the Public Service Commission for the post held by an ad-hoc appointee. It is well-settled that the services of such appointee can be dispensed with at any moment without assigning any reason. Likewise in the case of Naveeda Tufail v. Government of Punjab (2003 SCMR 291), this court held that an ad hoc employee has no right to hold the post beyond the period for which he was appointed and it is also not right for the Government to continue ad hoc appointments for number of years without undertaking the exercise of selection on regular basis in the prescribed manner. The ad hoc appointment is appointment of a duly qualified person made otherwise in accordance with prescribed method of recruitment and is made only in exceptional circumstances. This stopgap arrangement as a temporary measure for a particular period of time does not by itself confer any right on the incumbent for regular appointment or to hold it for indefinite period but at the same time if it is found that incumbent is qualified to hold the post despite his appointment being in the nature of precarious tenure, he would carry the right to be considered for permanent appointment through the process of selection as the continuation of ad hoc appointment for considerable length of time would create an impression in the mind of the employee that he was being really considered to be retained on regular basis. The ad hoc appointment by its very nature is transitory which is made for a particular period and creates no right in favour of incumbent with lapse of time and the appointing

authority may in his discretion if necessary, make ad hoc appointments but it is not open for the authority to disregard the rules relating to the filling of vacancies on regular basis in the prescribed manner. In the case of Tariq Aziz-ud-Din and others: (in re: Human Rights Cases Nos. 8340,9504-G, 13936-G, 13635-P & 14306-G to 143309-G of 2009) (2010 SCMR 1301), this Court held that in case where the appointing authority is satisfied that no suitable officer is available to fill the post and it is expedient to fill the same, it may appoint to that post on acting charge basis the most senior officer otherwise eligible for promotion in the cadre or service as the case may be. It is the duty and obligation of the competent authority to consider the merit of all the eligible candidates while putting them in juxtaposition to isolate the meritorious amongst them. Expression 'merit' includes limitations prescribed under the law. Discretion is to be exercised according to rational reasons which means that; (a) there be finding of primary facts based on good evidence; and (b) decisions about facts be made for reasons which serve the purposes of statute in an intelligible and reasonable manner. Actions which do not meet these threshold requirements are considered arbitrary and misuse of power [Director Food, N.W.F.P v. Messrs Madina Flour and General Mills (Pvt) Ltd. (PLD 2001 SC 1)].

19. In the case of antedated promotion also to a selection post, the primary criterion is fitness and then seniority. The phenomenon of antedated promotion is not novel or unique but sometimes, keeping in mind the exigency and in the event of some inevitable circumstances, ante-dated promotion can be granted in the appropriate cases which have been done in this case taking into consideration the judgment of learned Tribunal. The purpose of convening DPC meeting is to fill up vacant posts through promotion according to applicable rules of service. If the DPC meeting is not convened within a reasonable period of time despite availability of vacant situations for promotion, then obviously, this creates frustration and despondence amongst the civil servants/employees and in this case the judicial officers if they are otherwise eligible to be considered for promotion after completing required length of service in particular grade or posts and fulfillment of other prerequisites but due to inordinate delay in holding DPC, the consideration of their fitness for promotion remained in limbo. Where the meeting of DPC scheduled to be held is postponed or adjourned without announcing any future date or not convened within reasonable period to the prejudice of an

officers/employee, the competent authority in order to foster justice may grant antedated promotion to the higher post bearing in mind the eligibility and fitness in the DPC so that such officers/employees may not be subjected to a lower position in their seniority list or become victim of unwarranted delay in holding DPC by the competent authority. The pleasantest resolution to avoid such anomalies with a view to ventilate the sufferings of the officers eligible for promotion is to make sincere efforts to ensure that there shall be no unreasonable or irrational delay in the DPC meetings which creates multiplicity of proceedings and litigation amongst the incumbents. The earlier judgment of the Tribunal was affirmed by this Court which was a judgment in rem, therefore, the antedated promotions were granted to certain judicial officers in compliance of Tribunal's judgment which was merged in the judgment of this Court. The minutes of the meeting of the Promotion Committee dated 09.11.2016 demonstrate unequivocally that the personal files of the judicial officers were read thoroughly including their conduct, legal acumen reflected from the judgments authored by them, Annual Confidential Reports/dossiers and after reasonable and meaningful assessment, they were found fit for antedated promotion hence we do not find any illegality or perversity in the decision of Promotion Committee.

20. In the earlier judgment, the Tribunal without setting aside the Notification impugned in that appeals, held that the appellants in all said service appeals as well as non-appealing Judicial Officers who were also appointed on regular basis prior to the regularization of ad hoc services of the private respondents were declared senior to the private respondents and after declaring the said appellants as well as non-appealing Judicial Officers senior to the private respondents, their cases were referred to the Administration Committee of the High Court of Balochistan for consideration of their promotion to the next grade from the date when the respondents were promoted. In the impugned judgment of the Tribunal in the present appeals also, the earlier judgment was acknowledged and recapitulated that the Tribunal's judgment dated 25th April 2016 passed in Service Judicial Appeal No.01 of 2002 was judgment in rem and shall be implemented in letter and spirit. The aforesaid order was challenged in this Court but Civil Petitions were dismissed on 20.06.2016 thereafter, Civil Review Petitions No. 326 to 330 of 2016 were filed but vide order dated 26.9.2016 the review petitions were also dismissed. In this scenario, the doctrine of merger is somewhat applicable. In essence, the doctrine of

merger is a common law doctrine which expounds a philosophy of propriety in the chain of command vis-à-vis the justice system, but it is not recognized as doctrine under the constitutional law or in any other statute. According to different Law Lexicons the doctrine of merger arises only when there are two independent things and the greater one would swallow up or may extinct the lesser one by process of absorption. In case an appeal or revision is provided before a superior court against an order passed by any Court or Tribunal or any other authority and the superior court where appeal is preferred modifies, reverses or affirms the decision of lower fora then the order or decision passed by subordinate or lower forum is merged into the decision rendered by superior courts which will remain operative for enforcement in accordance with law. In order to apply this doctrine in letter and spirit, there must be a decision of a subordinate forum or Tribunal and against any such decision; there must be a right of appeal or revision provided under the relevant law. While deciding any such appeal or revision, the appellate forum must have affirmed, modified or reversed the order or judgment of the court below. According to some Law Lexicons, the meaning of the word "Merger" is as follows:-

P.Ramanatha Aiyar's Advanced Law lexicon. Merger presupposes the existence of two independent things or estates, the greater of which would swallow up or may extinct the lesser one by the process of absorption. Dalip Sing v. Jaisi Ram, AIR 1981 HP 49, 56. [Pun Pre-emption Act (10 of 1913). S. 22].

Legal Terms & Phrases (Judicially defined from 1947–2012). Merger means the fusion or absorption of one thing or right into another; generally spoken of a case where one of the subjects is of less dignity or importance than the other; Adamjee Insurance Co. Ltd. Vs. MCB 2003 CLD 463 = PTCL 2003 CL 739". Merger is defined generally as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased, an absorption or swallowing up so as to involve a loss of identity and individuality"; Nabi Bux vs. Land Acquisition Officer 2003 CLC 1914. Ref. C.J.S Vol, 57, p.1067. Quoted. The primary meaning of the words 'merge' & 'merger' seems to be to sink or disappear in something else, to be lost to view or absorbed into something else, to become absorbed or extinguished, though at the same time; the word 'merge' also carries meaning of joining together, an addition, a combination of the qualities of one with another not a death but rather a marriage; A & B Food Industries. Vs. CIT. 1992 SCMR 663+PTD 1992. & 932 Also PTD 1992 545.

Osborn's Concise Law Dictionary. Eleventh Edition-Edited by Mick Woodley. Merger. That operation of law which extinguishes a right by reason of its coinciding with another and greater right in the same person.

21. In the case of Hameed Akhtar Niazi Vs. The Secretary, Establishment Division, Government of Pakistan and others (1996 SCMR 1185), this Court while remanding case to the Tribunal clearly observed that if the Tribunal or this Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the civil servant

who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates of justice and rules of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation, instead of compelling them to approach the Tribunal or any other legal forum. The earlier judgment was a judgment in rem, hence the directions were equally applicable to appealing and non-appealing Judicial Officers. In the case of Tara Chand and others Vs. Karachi Water & Sewerage Board, Karachi and others (2005 SCMR 499), this court considered the doctrine of judgment in rem and personam. While discussing the exactitudes and philosophy, also quoted its meaning derived from different law dictionaries in the following manner:-

The Oxford Companion to Law by David M. Walker

Judgment in personam. A judgment determining the rights of persons inter se in or to any money or property in dispute, but not affecting the status of persons or things or determining any interest in property except between the parties. They include all judgments for money.

Rem, Judgment in. A legal determination binding not only the parties but all persons. It applies particularly to judgments in Admiralty, declaring the status of a ship, matrimonial causes, grants of probate and administration and condemnation of goods by a competent Court.

K .J. Aiyar's Judicial Dictionary (10th Edition 1988)

Normally a judgment binds only those who are parties to it. Such judgments are known as Judgments in personam.

Rem, Judgment in. A judgment which gives to the successful party possession or declaration of some definite right which right is available against the whole world.

Words and Phrases legally defined (Vol. 3 I-N)

Judgment, In personam. A judgment in personam or inter parties are those which determine the rights of parties inter se to or in the subject-matter in dispute, whether it be corporeal property of any kind whatever or a liquidated or unliquidated demand, but do not affect the status of either persons or things, or make any disposition of property or declare or determine any interest in it except as between the parties litigant. They include all judgments which are not judgments in rem.

A judgment in personam determines the rights of the parties inter se to or in the subject matter in dispute, whether it be corporeal property of any kind whatever or a liquidated or unliquidated demand, but does not affect the status of either persons or things, or make any disposition of property, or declare or determine any interest in it except as between the parties litigant. Judgments in personam include all judgments which are not judgments in rem, but as many judgments in the latter class deal with the status of persons and not of things, the description "Judgment inter parties" is preferable to 'Judgment in personam'.

Judgment, In Rem. A judgment in rem may be defined as the judgment of a Court of competent jurisdiction determining the status of a person or thing, or the disposition of a thing (as distinct from the particular interest in it of a party to the litigation). Apart from the application of the term to persons, it must affect the res in the way of condemnation, forfeiture, declaration of status or title, or order for sale or transfer.

Black's Law Dictionary (6th Edition).

Judgment in personam or inter parties. A judgment against a particular person, as distinguished from a judgment against a thing or a right or status.

Judgment in rem. An adjudication pronounced upon the status of some particular thing or subject-matter, by a Tribunal, having competent authority. *Booth v. Copley*, 238 Ky.23, 140 S.W 2d, 62, 666. It is founded on a proceeding instituted against or on something or subject-matter whose status or condition is to be determined. *Eureka Building and Iran Assn v. Shultz*, 139E Kan, 435, 32 P.2d 477, 480; or one brought to enforce a right in the thing itself. *Federal Land Bank of Omaha v. Jafferson*, 229 Iowa 1054, 295 N.W. 855, 857. It operates upon the property, *Guild v. Walis*, 150 Or. 69, 40 P. 2nd 747, 742. It is a solemn declaration for the status of some person or thing. *Jones v. Teat*, Tex Civ. Appellant. 57 S.W. 2d. 617, 620. It is binding upon all persons in so far as their interests in the property are concerned".

22. After merger of the Tribunal's judgment in the judgment of this court, the binding effect could not be obliterated by the Administration Committee of the High Court, so they basically put into effect the directions of learned Tribunal which was affirmed by this Court. In the case of Shahid Pervaiz v. Ejaz Ahmad (2017 SCMR 206), this Court held that under Article 189, this Court is the court of last resort and laws declared or principles enunciated by it are binding on all the subordinate courts and authorities in Pakistan as reflected in Farhat Azeem v. Waheed Rasul (PLD 2000 SC 18). It was further held that the decisions of this Court laying down the proposition in law are laws binding on all, regardless whether they were party to the proceedings or not M/s Star Diamond Co v. Union of India (PTCL 1988 FC 229). It has also been held that even a decision of Supreme Court for which no reasons are given would be binding upon the Courts in the Safdar Ali v. Conservator of Forests (1987 PLC (C.S.) 55). This Court in the case of Hitachi Limited v. Rupali Polyester (1998 SCMR 1618), has concluded that the Supreme Court is not a slave of doctrine of stare decisis and can change or modify its view with the passage of time. All the courts and public institutions are bound to follow the principles laid down by this Court. No exception to this principle can be created under the garb of rule or procedural niceties.

23. The compendious and terse of arguments progressed by the learned counsel for the appellants put on view which is also enlightening from aforesaid leave granting order that all the appellants have shown their mere apprehension that in view of the judgment passed by the Tribunal, their seniority is likely to be prejudiced or affected but when the learned counsel for the appellants were confronted to show any prejudice at the moment they failed to point out any such adverse effect right away. The Court of law does not decide the lis on mere sentiment, presumption or

mere apprehension but the cause of action should be based on a real cause for remedying the wrong into right. This Court cannot upset the Tribunal's findings on the mere apprehensiveness that if the judgment of the Tribunal will remain in field, it will in future prejudice or affect the seniority of the petitioner. At the same time we want to explain in simple terms that in case any seniority issue is raised or determined in future which entailed any cause of grievance, that will be obviously considered by the competent authority at the right time for which an appropriate remedy is already specified under the law. A cause of action is predominantly a technical legal term meant for the set of circumstances and facts which give rise to institute and lodge the claim in the court of law but not any premature claims or grievances. It is legally acknowledged and recognized that it is the wrongdoing which in fact originates and triggers the right to sue. The court cannot hear any case nor render any decision without a valid cause of action or without accrual of right to sue or in other words without accrual of cause of action to set the law into motion. The expression "cause of action" means a bundle of facts which if traversed, a suitor claiming relief is required to prove for obtaining judgment. It is also well understood that not only the party seeking relief should have a cause of action when the transaction or the alleged act is done but also at the time of the institution of the claim. The expression "cause of action" is a fundamental element to confer the jurisdiction and is commonly empathized to mean a state of affairs that enables a party to carry on an action in a court of law or a Tribunal.

24. In the wake of above discussion, we do not find any justification to upset the findings recorded by the learned Tribunal in the impugned judgment. All Civil Appeals are dismissed accordingly.

Justice

Judge

Judge

Announced in open Court
on 28.01.2022 at Islamabad
Approved for reporting

Judge

