

IN THE FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Original/Appellate/Advisory Jurisdiction)

Present:

JUSTICE AMIN-UD-DIN KHAN, CHIEF JUSTICE
JUSTICE ALI BAQAR NAJAFI

C.P.L.A No.2799 of 2023

[against the judgment dated 12.06.2023 passed by the High Court Of Sindh, Karachi in Const. Petition No.D-57 of 2016]

Province of Sindh through Chief Secretary, Government of Sindh, Karachi & others **Vs.** Zulfiqar Khushk & others

C.P.L.A No.2919 of 2023

[against the judgment dated 12.06.2023 passed by the High Court Of Sindh, Karachi in Const. Petition No.D-6110 of 2020]

Province of Sindh through Chief Secretary, Government of Sindh, Karachi & others **Vs.** Zulfiqar Khushk & others

C.P.L.A No.3323 of 2023

[against the judgment dated 12.06.2023 passed by the High Court of Sindh, Karachi in C.P.No.D-7622/2018]

Ghulam Murtaza & others **Vs.** Province of Sindh through its Chief Secretary Sindh, Karachi & others

C.P.L.A No.5222 of 2023

[against the judgment dated 12.06.2023 passed by the High Court Of Sindh, Karachi in Const. Petition No.D-7622 of 2018]

Rana Muhammad Shar & others **Vs** Province of Sindh through its Chief Secretary Sindh, Karachi & others

C.P.L.A Nos.5223 & 5224 of 2023

[against the judgment dated 12.06.2023 passed by the High Court Of Sindh, Karachi in Const. Petition No.D-6110 of 2020]

Shafique Ahmad & others **Vs.** Province of Sindh through its Chief Secretary Sindh, Karachi & others

C.P.L.A Nos.5241 & 5244 of 2023

[against the judgment dated 12.06.2023 passed by the High Court Of Sindh, Karachi in Const. Petition No.D-6110 of 2020 & Const.Petition No.D-7622/2018]

Babar Saleh & others **Vs.** Province of Sindh through its Chief Secretary Sindh, Karachi & others

C.P.L.A Nos.5242 & 5243 of 2023

[against the judgment dated 12.06.2023 passed by the High Court Of Sindh, Karachi in Const. Petition No.D-57 of 2016]

Abdul Rauf & others **Vs.** Province of Sindh through its Chief Secretary Sindh, Karachi & others

C.P.L.A No.5245 of 2023

[against the judgment dated 12.06.2023 passed by the High Court Of Sindh, Karachi in Const.P.D-57/2016]

Ghulam Ali alias Tariq Ahmad & others **Vs.** Province of Sindh through its Chief Secretary Sindh, Karachi & others

For the Petitioner(s):

Mr. Sibtain Mehmood
Addl. Advocate General, Sindh
[in CPLA Nos.2799 & 2919 of 2023 and also for the respondent in CPLA Nos.3323, 5222, 5223, 5224, 5241, 5243 & 5242 of 2023]

Mr. Salman Akram Raja, ASC
[assisted by M/s Raja Hamza Anwar & M.Shakeel Mughal, Advocates]
(in CPLA Nos.5241 & 5244 of 2023)

Mr. Faisal Siddiqui, ASC
[in CPLA Nos.5242 & 5243 of 2023]

Mr. Zulfiqar Khalid Maluka, ASC
[in CPLA No.5245 of 2023]

Mr. Afnan Karim Kundi, ASC
[assisted by Mr. M. Mustafa Kundi, Advocate]
Syed Rafaqat Hussain Shah, AOR
[in CPLA Nos.5223 & 5224 of 2023]

Mr. Muhammad Waqar Rana, ASC
Mr. Ajmal Ghaffar Toor, ASC
[in CPLA No.5222 of 2023]

Mr. Haris Azmat, ASC
Ms. Parveen Chachar, AOR
[in CPLA No.3323 of 2023]

For the Respondent(s): Mr. Sarmad Hani, ASC
[in CPLA Nos.2799, 3323, 5222, 5224 & 5244 of 2023]

Barrister Saad Mumtaz Hashmi, ASC
[in CPLA Nos.2919, 5223, 5241 & 5243 of 2023]

Dates of Hearing: 11th May to 14th May, 2026 and 18th &
19th of May, 2026

JUDGMENT

ALI BAQAR NAJAFI, J.- Through these Civil Petitions for Leave to Appeal (**CPLAs**) preferred against the orders passed by Sindh High Court whereby the Writ Petitions filed by the respondents were allowed, Provincial Civil Service (Secretariat) Rules, 2006 (hereinafter to be called “**Rules**”) was declared ultra vires of the Constitution of Islamic Republic of Pakistan, 1973 in the post remand proceedings ordered by the Supreme Court of Pakistan¹ directing the High Court of Sindh that the “*Constitutional and legal issues involved in the matter*”, be decided after issuing notice to the Advocate General, Sindh while observing that the “*controversy apparently relates to the terms and conditions of service and the applicability of Article, 212 of the Constitution.*”

2. The officers of the Provincial Civil Service (Secretariat) (hereinafter to be called **PSS**) filed Constitutional Petition praying for a direction to notify the Sindh Civil Servants (Provincial Management Service) Rules, 2006 (Rules) for their pre-service

¹ Order dated 09.09.2022 (Civil Appeal No.347 to 356 of 2022)

training so that they are not discriminated with Executive Provincial Civil Secretariat Office/Ex PCS Cadre. The said petition was allowed and the **Rules** *ibid* were found by the Sindh High Court vide impugned judgment dated 12.06.2023 to have been drafted under section 26 of the Sindh Civil Servant Act, 1973, therefore, be notified otherwise it would have created a sense of insecurity for their training and promotion. However, the **Ex-PCS** Officers filed petition under section 12(2) CPC before the High Court of Sindh agitating that the respondent/**PSS** Officers had misled the court to frame the **Rules** in the garb of purporting training rules but the said petition was dismissed while observing that the applicants/**PSS** Officers should wait until such rules are notified or they should file a representation before the authority to decide about the disagreement on the sharing formula related to various grade retained by the respective Ex-PCS and PSS officers. It was the case of the PSS before the Supreme Court when the said order was challenged that the said order under section 12(2) CPC was passed on the basis of a misconception that the merger of the two cadres was not the subject matter of the said constitutional petitions and that the original relief of framing the Rules of PSS was overlooked by S&GAD Department. It is with this background that the Supreme Court of Pakistan had disposed of C.P.No.522-K/2016 on 07.03.2017² by observing that the rules shall be framed and notified by the concerned authority with independent application of mind without being influenced by any order passed by the High Court of Sindh and the parties might seek appropriate remedy if they were still aggrieved of the said rules. Hence a summary of the draft Rules was prepared and presented to the Chief Minister, Sindh, requesting him for approval of the proposal of the Provincial Management Service and its rules by amalgamating the PSS and Ex-CSS Groups which may not be considered and be discouraged as both the cadres/groups are separate. Meanwhile, a contempt petition was filed before the Supreme Court on 18.09.2017 for the non-compliance of the said order dated 07.03.2017 and a notice under section 17 of the Contempt of Court Act, 2003 was issued but it was disposed of on

² Order dated 07.03.2017 in C.P.No.522-K/2016

21.03.2018 in view of the compliance report since the rules had been framed. Meanwhile, the said Rules were challenged before the Sindh High Court where they were declared ultra vires of the Constitution through the judgment³ therefore had been challenged in these petitions by taking various grounds.

CONTENTIONS OF THE PARTIES

3. **Mr. Sibtain Mehmood, learned Additional Advocate General Sindh** attacked the maintainability of the constitutional petition before the High Court wherein the terms and conditions of service of the respondents were challenged by questioning the vires of the Sindh Civil Servants (Provincial Management Service) Rules, 2018 which should have been challenged before the Sindh Service Tribunal; that the rules in question were drafted within the legislative competency of the authority delegated under section 26 of the Sindh Civil Servants Act, 1973; that mostly reliance was placed upon Ali Azhar Baloch Case⁴ in the impugned judgment but no provision of the Constitution was referred the said rules were directly in conflict; that while passing the impugned judgment the direction of the Supreme Court were not taken into consideration as neither the applicability of Article 212 of the Constitution, 1973 nor different clauses of the rules under challenged were discussed.

4. **Ms. Parveen Chachar, ASC, Mr. Muhammad Afnan Karim Kundi, ASC, Mr. Muhammad Waqar Rana, ASC and Mr. Ajmal Afzal Toor, ASC** while adopting the arguments of the learned law officer added that any framed rule on the terms and conditions of service of a civil servant is to be considered as a final order which had to be challenged before the Service Tribunal; that further amendments were made in the said rules during the pendency of the proceedings before the High Court which were never challenged; the respondents are not aggrieved persons in term Rule, 5 of the impugned rules; that the rules under challenge do not affect section 8 and 9 of the Sindh Civil Servant Act, 1973 in any manner; that the rules were framed by the delegated authority under Article 240 of the Constitution, 1973; various debates

³ Impugned judgment dated 12.06.2023

⁴ "Ali Azhar Khan Baloch and others Vs. Province of Sindh and others" (2015 SCMR 456)

recorded before the introduction of Article 212 were also referred to clarify the concept of Administrative Tribunals.

5. **Mr. Faisal Siddiqui, ASC** argues that a new category of service is created which is not a merger of the two types of service; that the respondents have no locus standi to challenge the service rules; that the said rules were framed consequent to an order of Supreme Court and during the contempt proceedings; that many years before the province of Punjab (in 2004) and Khyber Pakhtunkhwa (**KPK**) (in 2007) had already framed such rules which pathway was just followed by the Sindh Government; that the challenge of the appointment letter of some civil servants by the some civil servants amounts to questioning the terms and conditions of service, therefore, the jurisdiction of Sindh Service Tribunal should have been invoked.

6. **Mr. Raja Salman Akram, ASC** argues that writ petition was not maintainable before the Sindh High Court; that no limitation exists in challenging the vires of a Rule before the Service Tribunal; that the rules ibid were framed within the scope of section 26 of the Sindh Civil Service Act, 1973 as the powers are commonly exercised by the Government or person authorized by the Government therefore the rules were promulgated by the authorized officer; that the rules were also further regulated by the Sindh cabinet recently. They all pray to set-aside the impugned judgment.

7. **Conversely, Mr. Sarmad Hani, ASC and Barrister Saad Mumtaz Hashmi, ASC** learned counsel for the respondents have contended that the impugned rules were discriminatory as they were not based upon an intelligible differentia not relatable to the lawful object; that the rules in question were framed beyond the legislative competence of the authority under Article 240 of the Constitution, 1973; that the rules cannot override the specific provisions of the parents statute; the rules are to carry out the purpose of the statute; that the rules cannot be framed in derogation of or in conflict with the parent statutory provision; that the impugned rules have changed the cadre of the employees which have been merged into a new type of employment in

violation of section 8 and 9 of the Civil Servants Act, 1974; that the general administration will suffer if the rules are allowed to continue; that the fundamental right of the respondent under article 4 and 9 of the Constitution, 1973 will be violated; that no civil servant can be transferred out of his cadre and posted to a different cadre post which have to be filled through competitive exams.

8. **After hearing** the learned counsel for the parties and perusing the file, it is straightaway observed that the question regarding the maintainability, legislative competency, change of cadre, merger and discrimination has been raised which are required to be answered separately under their headings.

9. But before we do that, it would be appropriate to give a background leading to the filing of the present petition before the Sindh High Court. As already observed in the preceding paragraphs in the first round of litigation the matter went up to the Supreme Court of Pakistan where it was remanded to the High Court without giving any specific observation but by issuing direction that the above said categories should be discussed in the impugned judgement.

10. Historically, the West Pakistan Civil Service Executive Branch Rules, 1964 were promulgated later, official Provincial Secretariat Services (**PSS**) Rules were promulgated under section 26 of Civil Servants Act, 1973 on 10.10.1973. In the Province of Punjab Provincial Management Service Rules, 2004 were notified on 17.01.2004. Likewise, in the Province of Khyber Pakhtunkhwa (**KPK**) Provincial Management Service Rules, 2007 were introduced on 11.5.2007. In this context, a draft of Rules 2006 (**The Rules**) called Sindh Civil Servants (Provincial Management Services) Rules, 2006 were introduced. However, they were not notified by the Government of Sindh, therefore, the officers of Provincial Secretariate Service PSS approached Sindh High Court by filing Const. Petition No.D-1898/2012 for the issuance of a direction to the Government to notify the said Rules. On 13.08.2013 the said Const. Petition was allowed and was disposed of with the

observation that such Rules if notified would certainly cater for the good governors as it has already been established in other Provinces. It was further observed that the Rules were prepared in accordance with Section 26 of Sindh Civil Servants Act, 1973 and that it was within the powers of authority to amend the Rules, if so required. An application under Section 12(2) CPC in the form of C.P No.1898/2012 was filed but it was dismissed on 21.06.2016 by a Division Bench of the Sindh High Court. They said order was challenged before the Supreme Court in CPLA No.522-K/2016 was disposed of on 07.03.2017 by observing that the Rules be approved and notified by the Government of Sindh by independent application of mind and without being influenced by the order of the High Court and the parties might seek appropriate remedy if so aggrieved. Meanwhile, the competent authority did not approve the draft Rules of 2006 which necessitated the PSS officers to file Contempt petition No.180/2017 in which notices were issued. Another summary, after necessary deliberation and adopting modification by applying an independent mind, was submitted to the competent authority by presenting the draft rules 2018 which were approved and were notified on 20.03.2018. A compliance report was submitted before the Supreme Court whereafter the contempt petition was disposed of. The ExPCS officers challenged the Civil Servants Provincial Management Service Rules, 2018 before the High Court in CP No.D-7622/2018 which was allowed on 13.08.2021 by declaring the same Rules as ultra vires. The Government of Sindh along with some private parties had challenged the said order before the Supreme Court in which leave was granted on 09.09.2022 and vide judgement dated 13.08.2021 the impugned judgment (herein) was set aside and the case was remanded back to the High Court of Sindh while observing that the court had misconstrued the basic point to the effect that there was no merger of two cadres and that the Rules were not examined with reference to the Articles of the Constitution, 1973 where after the impudent judgement was passed by the Sindh High Court.

WHAT IS PROVINCIAL MANAGEMENT SERVICE RULES, 2018

11. The Provincial Management Service Rules, 2018 were framed under Section 26(1) of Civil Servants Act, 1973 which is also comprised of two schedules I & II. The nomenclature Provincial Management Service PMS (Rule 3) work consisting of the post described in schedule number one under Rule 3, whereas, their appointing authority was specified in schedule II, under Rule 2(a). The word department means the Services, General Administration and Coordination Department. The service group meant group of executive PCS and PSS separately under Rule 2(j). The method of appointment and the minimum qualification, age limit and other conditions of PMS were given in schedule II. Under the repealing provision, the West Pakistan civil Service Rules, 1964 prescribing the method of appointment to the post of Deputy Secretary in the secretariate and for the appointment of the post office Section Officer in the secretariat have been repealed. On the point, *whether it was a merger or not or a change of cattle or not*, it has been provided that for the purpose of promotion in inter-seniority in respective service of executive PCS and PSS shall be maintained separately as was being done earlier. And for the promotion in BPS 18 and above the share between executive PCS and PSS shall be determined by the Government and then comments of executive PCS and PSS shall form part of the dying career till the retirement of the last such incumbent and that the last incumbent of each group shall rank senior to the first incumbent of the Provincial Management Service. The text of the said Rules and the schedules are reproduced as under:-

- “1. Short title and commencement.—(1) These rules may be called the Sindh Civil Servants (Provincial Management Service Rules, 2018).
(2) They shall come into force at once.
2. **Definitions.**— In these rules unless the subject or context otherwise requires—
 - (a) “Appointing Authority” means the authority specified in column 4 of Schedule-II;
 - (b) “Chief Minister” means the Chief Minister of Sindh;
 - (c) “Department”, means Services, General Administration and Coordination Department;
 - (d) “Government” means the Government of Sindh;
 - (e) “Graduate” means holder of a Bachelor or equivalent degree from a recognized University or institute;
 - (f) “Provincial Management Service” means the Provincial Management Service (PMS) consisting of the posts as provided in Schedule-I;
 - (g) “prescribed departmental examination/training” means the examination/training prescribed by Government to be conducted by the Department or any other agency appointed by Government for the purpose of confirmation or promotion;
 - (h) “Schedule” means a Schedule appended to these rules;
 - (i) “Secretariat” means the Sindh Secretariat; and
 - (i) “Service Group” means Group of ex-PCS and PSS separately.

3. **Nomenclature of the pots.-** The Provincial Management Service (PMS) shall consist of the posts specified in Schedule-I.”
4. **Method of Appointment.-** The method of recruitment, minimum qualification, age limit and other conditions for Provincial Management Service (PMS) shall be as given in Schedule-II
5. **Repeal and Savings.-** The West Pakistan Civil Service (Executive Branch) Rules, 1964, issued under the Services and General Administration Department Notification No.SOI (S&GAD)1-5/92 dated the 25th September, 1993, prescribing the method of appointment to the post of Deputy Secretary in the Secretariat, and the S&GAD Notification No.SOX(SGA&CD)3-58/84 dated the 10th October, 1993, prescribing the method of appointment to the post of Section Officer in the Secretariat are hereby repealed:
Provided that –
- (i) for the purpose of promotion the inter-se-seniority in respective service Group of ex-PCS and PSS shall continue to be maintained separately;
 - (ii) for the purpose of promotion in BPS-18 and above the share between ex-PCS and PSS shall be as determined by the Government;
 - (iii) their service shall be governed by the laws and rules in force immediately before the commencement of these rules;
 - (iv) the incumbents of ex-PCS and PSS shall form as a part of dying cadre till the retirement of the last such incumbent;
 - (v) the last incumbent of either Group shall rank senior to the first incumbent of the Provincial Management Service.
6. **Transitional.-** The condition of graduate in column 7 para (2)(b) of Schedule-II shall not apply for a period of three years from the commencement of these rules for the incumbents holding the posts immediately before such commencement for promotion to BPS-17 posts.

SCHEDULE-I

(See rule 3)

The following posts in different grades shall form cadre strength of the PMS in each grade:-

1)	PMS : BS-17	Section Officer/Assistant Commissioner and other officers holding equivalent posts as per details at Annexure Part-I.
2)	PMS : BS-18	Secretary/Deputy Commissioner/Additional Deputy Commissioner and other officers holding equivalent posts as per details at Annexure Part-II
3)	PMS : BS-19	Additional Secretary/Deputy Commissioner and other officers holding equivalent posts as per details at Annexure Part-III
4)	PMS : BS-20	Secretary to Government of Sindh/Commissioner and other officer holding equivalent posts as per details at Annexure Part-IV
5)	PMS : BS-21	Additional Chief Secretary to Government of Sindh and other officers holding equivalent posts as per details at Annexure Part-V.
6)	PMS : BS-22	Chairman, Planning and Development Board and other officers holding equivalent posts as per details at Annexure Part-V.

ANNEXURE (PART-I)

(See Schedule-I)

(Posts in BS-17)

S.No.	NAME OF THE POST	% SHARE OF TOTAL POSTS
1	Section Officer	100%
2	Assistant Commissioner	100%
3	Other equivalent posts, as may be specified by the Government in the cadre schedule from time to time	100%

ANNEXURE (PART-II)

Posts in BS-18

S.No.	NAME OF THE POST	% SHARE OF
-------	------------------	------------

		TOTAL POSTS
1	Deputy Secretary in the Secretariat and equivalent in Board of Revenue	100%
2	Deputy Commissioner/Additional Deputy Commissioner	100%
3	Other equivalent posts, as may be specified by the Government in the cadre schedule from time to time	100%

ANNEXURE (PART-III)

Posts in BS-19

S.No.	NAME OF THE POST	% SHARE OF TOTAL POSTS
1	Additional Secretary in the Secretariat	100%
2	Deputy Commissioner/Additional Commissioner	100%
3	Other equivalent posts, as may be specified by the Government from time to time	100%

ANNEXURE (PART-IV)

Posts in BS-20

S.No.	NAME OF THE POST	% SHARE OF TOTAL POSTS
1	Secretary to Government of Sindh	100%
2	Commissioner	100%
3	Other equivalent posts, as may be specified by the Government in the cadre schedule from time to time	100%

ANNEXURE (PART-V)

Posts in BS-21

S.No.	NAME OF THE POST	% SHARE OF TOTAL POSTS
1	Additional Chief Secretary	100%
2	Chairman, Anti-Corruption and Enquiries	100%
3	Chairman, Chief Minister's Inspection Team	100%
4	Sr. Member, Board of Revenue, Sindh/Chief Land Commissioner/Relief Commissioner	100%
5	Commissioner Karachi	100%
6	Other equivalent posts, as may be specified by the Government in the cadre schedule from time to time	100%

ANNEXURE (PART-V)

Posts in BS-22

S.No.	NAME OF THE POST	% SHARE OF TOTAL POSTS
1	Chairman, Planning and Development Board	100%

SCHEDULE-II

(See rule 4)

Name of the Department	Functional Unit	Delegation/ Scale of the post	Appointing Authority	Qualification for appointment		Method of Appointment	Age limit for initial appointment		Examination/training required for confirmation/promotion
				Initial appointment	Promotion		Min.	Max.	
1	2	3	4	5	6	7	8	9	10
							21 years	28 years	
S&GAD	Provincial Management Service	PMS (BS-17) as per details given in Schedule-I	Chief Minister	Graduate second Division from recognized University	NIL	1) 50% by initial appointment on the recommendation, of the Sindh Public Service Commission, based on the result of competitive examination. 2) 50% by promotion as follow: a) 25% from amongst the MukhtiarKars, who are graduates, on the basis of seniority-cum-fitness, who have five years service as MukhtiarKar and have passed the prescribed departmental examination. b) 25% from amongst the Superintendents/Private Secretaries on seniority-cum-fitness basis, who are graduate and have passed the prescribed	In the case of officials serving in connection with the affairs of the Federal Government, who are domiciled in the Sindh as well as the officials serving in connection with the affairs of the Sindh Government having at least four years service. As such, the upper age limit shall be 33 years.		Prescribed Departmental Training/Examination

						departmental examination in the ratio of 60:40 respectively.			
S&GAD	Provincial Management Service	PMS (BS-18) as per details given in Schedule-I	Chief Secretary	NIL	100% by promotion	By promotion on seniority-cum-fitness basis from amongst the cadre of PMS/BS-17 having at least five years service			Prescribed Departmental Examination
S&GAD	Provincial Management Service	PMS (BS-19) as per details given in Schedule-I	Chief Minister	NIL	100% by promotion	By promotion on seniority-cum-fitness basis from amongst the cadre of PMS in BS-18 and having at least twelve years service against the posts in BS-17 and above.			Mid Career Management Course at National Institute of Management OR as prescribed in Rules.
S&GAD	Provincial Management Service	PMS (BS-20) as per details given in Schedule-I	Chief Minister	NIL	100% by promotion	By promotion on seniority-cum-fitness basis from amongst the cadre of PMS officers, holding posts in BS-19 and having at least seventeen years service against the posts in BS-17 and above.			Senior Management Course at National Institute of Management OR as prescribed Rules.
S&GAD	Provincial Management Service	PMS (BS-21) as per details given in Schedule-I	Chief Minister	NIL	100% by promotion	By promotion on the basis of selection on merit from amongst the PMS officers holding posts in BS-20 and having at least twenty two years service against the posts in BS-17 and above.			National Management Course at National Management College or National Defence University.
S&GAD	Provincial Management Service	PMS (BS-22) as per details given in Schedule-I	Chief Minister	NIL	100% by promotion	By promotion from PMS (BS-21) officers.			As prescribed from time to time

WHETHER IT WAS A MERGER

12. The Sindh High Court in passing the impugned judgement had observed that the said Rules were ultra varies of the Civil Servants Act, 1973 and the Constitution, 1973 due to the merger of two cadres namely ex-PCS and PSS. It observed that Provincial Management Service in Schedule I has specified post in different cadres to form strength of the PMS and that PMS post in BPS 17 shows a Section Officer or an Assistant Commissioner and other officers holding equivalent posts mentioned in the details of the Schedule I. It was concluded that the schedule I of the PMS Rules clearly mentions that ex-PCS cadre and PSS cadre have been merged together by introducing yet another class of officers to include any other officer in BPS 17 to BPS 22 working in the Sindh Government or in service of Sindh Province whether in department, autonomous body, statutory body or any other organization under the administrative control of Government come into PMS service. The Government has retained powers under PMS Rules to appoint any such other officer SMS officer on post in the said schedule I. It was further observed that the impugned Rules have opened a window for the blue-eyed offices of the Sindh Government to induct in PMS service. The Sindh Government therefore, will appoint all those officers who are non-cadre officers or non-civil servants who have not passed CCE in the PMS service. It was also concluded that the said Rules are in violation of Section 8 and 9 of the Civil

Servants Act, 1973 and that without amending the said two sections, they cannot be changed or emerged into a new service. It was also concluded that in the Federal Service structure a cadre officer is the one who appears in CSS conducted by the Federal Public Service Commission and likewise, in Sindh Province this Public Service Commission conducts CCE for routing cadre officers in the Province. It was further concluded that the two separate and distinct cadres of service having separate method of appointment, promotion, transfer training and posting as well as seniority cannot function together for the reason that job description of Assistant Commissioner and Section Officers is different.

(a) MAINTAINABILITY

13. It was argued that the challenge of the impugned Rules, if made before the Punjab Service Tribunal, would have ultimately landed in this Court in a Civil Appeal and that all including constitutional questions will have to be decided by this Court. In case of Contempt Proceedings against Chief Secretary, Sindh and others (*supra*), it was held that *“if the court is of the view that impugned enactment is violative of fundamental rights guaranteed under the constitution, it can examine the vires of such an enactment either on its own or in an application/petition filed by any party.”* It was further held that a civil servant under the mandate of the Constitution, 1973 has been guaranteed the fundamental rights being citizen of the country and under Article 4(1), all citizens are entitled to enjoy equal protection of law and have an inalienable right to be treated in accordance with law. Articles 4, 8, 9 & 25 of the Constitution, 1973 also provides protection to every citizen of his life and liberty and equally before law and non-discrimination, therefore, a civil servant enjoys a full protection and therefore, cannot be deprived of his right of reputation and status. A rule/regulation is discriminatory and is prejudiced to public interest and affecting the terminal limitations and legislative expectation of future advancement. Therefore, under Article 240 and 242 of the Constitution, 1973 all Civil Servants are duly protected by assuring that law promulgated by the Parliament and Provincial Assemblies will be subject to the constitution and not to

legislate any law against service structure provided in Part XII of Chapter 1 of the Constitution, 1973. Reference is again given to Ali Zhar Khan Baloch case (*supra*).

14. A Service Tribunal does not have the jurisdiction to determine the constitutionality of a Rule framed by a competent authority, if the terms and conditions of a Civil Servant are not disputed. It was therefore, rightly observed by the Sindh High Court in the impugned judgment that the Writ Petition was maintainable. We also agree to the maintainability of the Constitutional Petition before the High Court.

(b) LEGISLATIVE COMPETENCY

15. The Article 240 of the Constitution, 1973 stipulates that the terms & condition of service for appointment of a person in the service of Pakistan in connection with the Federation and All Pakistan Services shall be made by the Act of Parliament (*Majlis-e-Shoora*). But where the service is for the Province, and the post was connected with the officers of Province, the Act of Provincial Assembly or order of the authority under the Act of Provincial Assembly was required. Under section 23 of the Civil Servants Act, 1974⁵, the powers to make Rules vests concurrently with the Government or any authorized persons. Obviously, the Rules made under it will remain within the scope of the said section. Section 23 is reproduced as under:-

“23. Rules.– (1) The Governor, or any person authorized in this behalf may make such rules as appear to him to be necessary or expedient for carrying out the purposes of this Act.

(2) Any rules, orders or instructions in respect of any terms and conditions of service of civil servants duly made or issued by an authority competent to make them and in force immediately before the commencement of this Act shall, in so far as such rules, orders or instructions are not inconsistent with the provisions of this Act, be deemed to be rules made under this Act.”

16. Taking into consideration the stock of various laws, we observe that the rules were framed in accordance with the parent statute. It was rightly held in Paragraph No.7 of Farrukh

⁵ Section 26 of the Civil Servants Act, 1974 (reproduced the section_

Raza Sheikh case⁶ that it is trite law that Rules cannot override the specific provisions of the parent statute. The Rules are to carry out the objectives of the statute under which they are framed. We find that the purpose of the Ordinance cannot offend, oppose or be inconsistent with the provisions of the parent statute and any Rule to the extent of any such inconsistency is ultra vires of the parent statute. Paragraph No.7 is reproduced as under:-

7. *These Rules were notified in exercise of powers available in section 130(12) of the Ordinance, prior to amendment vide Tax Laws (Amendment) Act, 2020 and are saved in terms of amended section 130(6) of the Ordinance. Section 130(12) of the Ordinance provided that “subject to the Ordinance, the Appellate Tribunal shall have the power to regulate its own procedure....” In the year 2011 section 132(2) was amended and the portion dealing with appeal being dismissed in default was deleted. These Rules are “subject to the Ordinance” under section 130(12) and therefore cannot offend or contradict the substantive provisions of the Ordinance. Even otherwise, it is axiomatic that Rules being subordinate or delegated legislation, are framed under the authority of the parent statute, and are therefore subservient to the primary legislation. Rules cannot contradict or add to the clear provisions of the parent statute. Section 132(2) of the Ordinance provides that the Tribunal shall provide an opportunity of being heard to the parties to the appeal, however, in case any one of the parties is in default on the date of hearing, the Tribunal may proceed ex-parte and decide the appeal on the basis of available record. Section 132(2) no more provides for dismissal in default as was the case prior to the amendment brought about in section 132(2) in the year 2011 (supra). Rule 22(1) of the Rules, inter alia, provides that if the parties fail to appear before the Tribunal on the date of hearing, the appeal can also be dismissed in default. This part of Rule 22(1) clearly contradicts the parent statute i.e. section 132(2) of the Ordinance. It is trite law that Rules cannot override the specific provisions of the parent statute. The Rules are to carry out the purposes of the Ordinance and cannot offend, oppose or be inconsistent with the provisions of the parent statute (Ordinance in this case). Any rule, to the extent of any inconsistency with the parent statute is, therefore, ultra vires of the parent statute.”*

Obviously substantive provisions will have a dominating effect over the rules and so it be in the Rules under discussion. In Paragraph No.22 of United Bank Limited case⁷ it was rightly held that Rule making body cannot frame Rules in conflict with and in derogation of the substantive provisions of the law or statute under which the rules were framed. Paragraph No.22 is reproduced for ready reference:-

⁶ Farrukh Raza Sheikh Vs. The Appellate Tribunal Inland Revenue and others (2022 SCMR 1787)

⁷ United Bank Limited and others Vs. Noor-un-Nisa and others (2015 SCMR 380)

“22. Yet another important legal aspect of the case, which cuts to the very root of the claim of the respondents, is the question of limitation involved in the civil suit instituted by them on 15-12-1999. Under section 3 of the Limitation Act, 1908, it is the bounden duty of every Court of law to take notice of the question of limitation even if not raised in defence by the other contesting party(s). In the instant case, in their written statement (preliminary objections) the appellant have unfolded all the details regarding their entitlement over the disputed property to the knowledge of the respondents and their predecessor qua the previous round of litigation between the parties, which had commenced upon the filing of ejectment case by the Appellant Bank on 9-10-1980 and ultimately culminated in their favour vide judgment of the Lahore High Court dated 26-11-1993, passed in Writ Petition No.2894 of 1989. They had also taken some legal pleas as regards the maintainability of the suit on various grounds. However, strangely, the civil Court in its own wisdom did not frame the issue of limitation or decide it. Incidentally, this important legal aspect of the case, for which ample admitted and undisputed material was available on record, also escaped the sight of the learned Division Bench, which had passed the impugned judgment dated 14-5-2009.”

In Paragraph No.11 of Aryan Petro Chemical Industries case⁸, the Supreme Court held that it is a settled principle that a Statutory Rule cannot enlarge the scope of the section under which it was framed and if a Rule goes beyond what the section contemplates, the Rule must yield to the statute. The authenticity of executive to make Rules and regulations in order to effectuate the intention and policy of the legislature, must be exercised within the limits of mandate. If the rules are inconstant with the provisions of the said enactment and defeat the intention of the legislature expressed in the main statute same shall be invalid. The present Rules made under a Statute neither enlarges the scope of Act nor can go beyond the Act and are not be in conflict with the provisions of State or repugnant to any other law in force. Paragraph No.11 is reproduced for ready reference:-

“11. The perusal of Import and Export Orders, 1997 and 1999 would show that Federal Government placed no prohibition on the export of commodities produced and manufactured in Pakistan by any route. However, under Export Policy and Procedure Order, 2000, the export of goods manufactured in manufacturing bond was restricted via land route to Afghanistan. It is clear from the above referred Import and Export Orders issued by the Federal Government that the C.B.R. cannot extend its authority of framing rules to carry out the purpose of the above said statutes to restrict the export by land route. This is a settled principle that a statutory rule cannot enlarge the scope of the section under which it is framed and if a rule goes beyond what the section contemplates, the rule must yield to the statute. The authority of executive to make rules and

⁸ Pakistan through Secretary Finance, Islamabad and 5 others versus Aryan Petro Chemical Industries (Pvt.) Ltd., Peshawar and others (2003 SCMR 370)

regulations in order to effectuate the intention and policy of the Legislature, must be exercised within the limits of mandate given to the rule making authority and the rules framed under an enactment must be consistent with the provisions of said enactment. The rules framed under a statute if are inconsistent with the provisions of the statute and defeat the intention of Legislature expressed in the main statute, same shall be invalid. The rule making authority cannot clothe itself with power which is not given to it under the statutes and thus the rules made under a statute, neither enlarge the scope of act nor can go beyond the act and must not be in conflict with the provisions of statute or repugnant to any other law in force.”

However, as earlier mentioned the Rules under discussion are neither found to be in conflict with the past statute nor framed in derogation of the objective set in the statute.

(c) CHANGE OF CADRE OR MERGER

17. It is an admitted position that the impugned Rules do not provide any power to transfer or absorption of the Civil Servants then how they are violative of Sections 8 & 9 of the Civil Servants Act, 1973, is unanswered. If, for the sake of arguments, it is accepted that it was a merger of two cadres, a separate seniority will obviously be maintained. Even otherwise the creation of a separate cadre is an executive decision as held in Niamat Ullah Butt case.⁹ Last paragraph of the judgment is reproduced as under:-

“Cadre”, as is well-known, is the strength of a service or part of service sanctioned as a separate unit and each cadre consists of certain number of posts. There being no legal bar on the authority of the Government to keep the members of the teaching staff transferred from Local Body Institutions to the Education Department of the Provincial Government as a separate cadre and there being no violation of any specific term and condition of the appellants’ service, no ground exists for interference with the impugned order passed by the Service Tribunal.”

18. Even on 07.03.2025, the Cabinet has already examined and approved the amended rules after due deliberation and consultation, rectifying the ambiguity or irregularity, if any.

19. It was argued that the general administration will be affected if the impugned rules were allowed to remain effective in the field.

⁹ Niamat Ullah Butt Versus The Government of the Punjab through the Secretary Education, Lahore (1988 SCMR 1453)

However, the scope of this Court is only to examine the constitutionality of the Rules as held in Imrana Tiwana case¹⁰.

20. It is important to observe that both officers come from the combined competitive exams and non-civil servants cannot and will not be inducted.

21. Great emphasis was laid on the contempt proceedings case against Chief Secretary Sindh¹¹ in which case of non-cadre posts was discussed. In Paragraph No.126 of the judgment, it was rightly held that Sindh Government cannot absorb a civil servant of non-cadre post to any cadre which is meant for the officers who are recruited from competitive process. It was further held that no civil servant can be transferred out of cadre to a cadre post of any other department to be filled through competitive process. This principle does not seem to have been compromised in framing the Rules *ibid*. Paragraph No.126 is reproduced 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*

¹⁰ Lahore Development Authority through D.G and others versus Ms. Imrana Tiwana and others (2015 SCMR 1739)

¹¹ Contempt Proceedings Against Chief Secretary, Sindh and others (2013 SCMR 1752)

which is violative of the scheme of civil service law as provided under Articles 240 and 242 of the Constitution.”

22. On the concept of characterization in Paragraph No.114 of Ali Azhar Khan Baloch case¹² it was rightly held that Section 8 of the Civil Servant Act, 1974 compartmentalizes the different classes of civil servants by dividing them in three categories i.e. Service, Cadre and Post as prescribed in the Rules framed by the department so as to ensure by the legislation that the vertical progression shall remain in the same compartment i.e. Service, Cadre and post. Section 5 of the Civil Servant Act, 1974 does not give any discretion to the Government to relax any Rule to change their cadre which principle also does not seem to have been compromised. Relevant part of Paragraph No.114 is reproduced as under:-

“114.Section 8 of the Act makes class of Civil Servants for proper administration and such class is not interchangeable at the whims of the Selection Authorities and/or the Government to extend favours to their blue eyed. There is no discretion given under section 5 of the Act to appoint any person in Civil Service against a Civil Post in the manner other than prescribed by the Rules. Rule 9(1) does not confer permanent status on Civil Servant on his appointment by transfer nor it contemplates his absorption in the transferee Department as a consequence of his appointment. There is neither procedure nor mechanism provided under the Act or the Rules to treat appointment by transfer as absorption in the transferee department.....”

(d) DISCRIMINATION

23. A legislative enactment is discriminatory if it is not based on intelligible differentia not relatable to the lawful object. The constitutional guarantee of equality directed against hostile discrimination and not against reasonable classification. In this regard, it is apt to recall Aristotle’s enduring observation that “equals should be treated equally and unequal unequally according to their relevant differences”. This principle has long been recognized in constitutional jurisprudence. Accordingly, the Legislature is competent to reorganize administrative structures and create new services in furtherance of efficient governance, provided that the classification adopted is founded upon an

¹² Ali Azhar Khan Baloch and others versus Province of Sindh and others (2015 SCMR 456)

intelligible differentia having a rational nexus with the object sought to be achieved. It is only when a legislative measure transgresses these constitutional limitations that judicial intervention becomes warranted.

24. Keeping the above constitutional principles in view, we proceeded to examine the impugned Rules and remain unable to find any discriminatory treatment amongst said class of persons. On such examination, we are of the considered view that the PMS Rules, 2018 do not suffer from the vice of discrimination nor are they inconsistent with the judgment of the Supreme Court in *Suo Motu Case No.13 of 2009* or the earlier judgment rendered in the matter.

25. Thus, we can safely conclude that the PMS Rules, 2018 are not inconsistent with the judgment of the Supreme Court in the *Suo Motu Case No.13 of 2009* as well as the original judgment. The seniority and promotion has been duly protected with the scope of section 8 & 9 of the Sindh Civil Servant Act, 1973. The fundamental difference between the executive **PCS** and **PSS** was with respect to the specific training in revenue etc. matters and recruitment of both these officers were through competitive exams with the training of practical experience therefore, a new service has been created upon the Provincial Management Service (PMS) comprising of both i.e. field and revenue secretariate post.

26. Obviously, the High Court could not substitute its findings qua the policy matter which is within the exclusive domain of the executive. The distinction between executive **Ex-PCS** and **PSS** were imaginary. The initial appointment of the officers **Ex-PCS** and **PSS** to different posts i.e. Assistant Commissioner and Section Officers, respectively but they have same channel of promotion in BS-18 and above having same vertical progression. The distinction between the cadres, if any, as well as the promotion to BS-18 will be made according to the post sharing formula.

27. Certainly, the courts are guardians of constitutional boundaries, not arbiters of the administrative wisdom. Where the Executive acts within the authority conferred by law and the

legislative classification satisfies the constitutional test of reasonableness, judicial review must yield to institutional restraint.

CONCLUSION

28. For the foregoing reasons, these petitions are converted into appeals and are allowed and the impugned judgment passed by High Court of Sindh at Karachi is set-aside.

CHIEF JUSTICE

JUDGE

Islamabad,
'APPROVED FOR REPORTING'
Adeel

Announced in open Court on **15.07.2026.**

JUDGE