IN THE HIGH COURT OF SINDH AT KARACHI

(Constitutional Jurisdiction)

Constitution Petition No. 1406 **of 2022**

Received on 07-3-2022

Additional Registrar (Writ)

1. **Mr. Maula Bakhsh Sahito**
   Son ofMr. Ghulam Mustafa Sahito,
   Muslim, Adult,
   Assistant Superintendent (BPS -16),
   Prisons Department, Government of Sindh,
   Presently serving at Central Prison & Correctional Facility,
   Larkana, Sindh.

2. **Mr. Asif Ali Korai**
   Son of Ghulam Nabi Korai,
   Muslim, Adult,
   Assistant Superintendent (BPS -16),
   In Prisons Department, Government of Sindh,
   Presently serving at Central Prison & Correctional Facility ,
   Sukkur, Sindh.

3. **Mr. Sirajjuddin**
   Son of Jamil Ahmed,
   Muslim, Adult,
   Assistant Superintendent (BPS -16),
   In Prisons Department, Government of Sindh,
   Presently serving at Central Prison & Correctional Facility ,
   Sukkur, Sindh.

SEAL OF THE HIGH COURT OF SINDH

4. **Mr. Abro Suhail Ahmed**
   Son of Sikander Ali,
   Muslim, Adult,
   Assistant Superintendent (BPS -16),
   In Prisons Department, Government of Sindh,
   Presently serving at Central Prison & Correctional Facility ,
   Larkana, Sindh.

5. **Mr. Shamsuddin Agha**
   Son of Muhammad Salahuddin,
   Muslim, Adult,
   Assistant Superintendent (BPS -16),
   In Prisons Department, Government of Sindh,
   Presently serving at District Prison & Correctional Facility ,
   Shikarpur, Sindh.

6. **Mr. Iqbal Ahmed Noonari**
   Son of Abdul Samad Noonari,
   Muslim, Adult,
   Assistant Superintendent (BPS -16),
   In Prisons Department, Government of Sindh,

Presently serving at Central Prison & Correctional Facility ,
Larkana, Sindh.

7. **Mr. Ozair Mustafa**
Son of Ghulam Mustafa,
Muslim, Adult,
Assistant Superintendent (BPS -16),
In Prisons Department, Government of Sindh,
Presently serving at Central Prison & Correctional Facility ,
Sukkur, Sindh.

8. **Mr. Waheed Hussain**
Son of Walidad,
Muslim, Adult,
Assistant Superintendent (BPS -16),
In Prisons Department, Government of Sindh,
Presently serving at District Prison & Correctional Facility ,
Malir, Sindh.

9. **Mr. Asif Ali Lakho**
Son of Sanam Ali,
Muslim, Adult,
Assistant Superintendent (BPS -16),
In Prisons Department, Government of Sindh,
Presently serving at Sindh Prisons Training Institute,
Nara, Sindh.

10. **Mr. Ameer HamzoKairano**
Son of Gul Hassan,
Muslim, Adult,
Assistant Superintendent (BPS -16),
In Prisons Department, Government of Sindh,
Presently detailed at District Prison & Correctional Facility ,
Dadu, Sindh.

11. **Mr. Munawar Ali**
Son of Muhammad Soomar Bhangwar,
Muslim, Adult,
Assistant Superintendent (BPS -16),
In Prisons Department, Government of Sindh,
Presently Detailed at District Prison & Correctional Facility ,
Nara, Sindh.

12. **Mr. Aijaz Hussain Behan**
Son of Allah Bux Behan,
Muslim, Adult,
Assistant Superintendent (BPS -16),
In Prisons Department, Government of Sindh,
Presently serving at Sindh Prisons Training Institute,

Nara, Sindh.

13. **Mr. Amir Raza**
Son of Raghib Hussain Channa,
Muslim, Adult,
Assistant Superintendent (BPS -16),
In Prisons Department, Government of Sindh,
Presently detailed at Central Prison & Correctional Facility,
Hyderabad, Sindh.

14. **Mr. Sarang Ali Jatoi**
Son of Abdul Jabbar Jatoi,
Muslim, Adult,
Assistant Superintendent (BPS -16),
In Prisons Department, Government of Sindh,
Presently posted at Central Prison & Correctional Facility,
Karachi, Sindh.

15. **Mr. Ghulam Abbas Khichi**
Son of Muhammad Ali Khichi,
Muslim, Adult,
Assistant Superintendent (BPS -16),
In Prisons Department, Government of Sindh,
Presently posted at Central Prison & Correctional Facility,
Karachi, Sindh.

16. **Mr. Hassnain Siddiqui**
Son of Muhammad Siddique,
Muslim, Adult,
Assistant Superintendent (BPS -16),
In Prisons Department, Government of Sindh,
Presently posted at Central Prison & Correctional Facility,
Karachi, Sindh.

17. **Mr. Saleem Ahmed Solangi**
Son of Muhammad Soomar Solangi,
Muslim, Adult,
Assistant Superintendent (BPS -16),
In Prisons Department, Government of Sindh,
Presently posted at Central Prison & Correctional Facility,
Karachi, Sindh.

18. **Mr. Najeeb Ahmed**
Son of Long Khan Jaskani,
Muslim, Adult,
Assistant Superintendent (BPS -16),
In Prisons Department, Government of Sindh,
Presently posted at Central Prison & Correctional Facility,
Hyderabad, Sindh.

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19. **Mr. Mir Nadir Talpur**
Son of Ghulam Shabir Talpur,
Muslim, Adult,
Assistant Superintendent (BPS -16),
In Prisons Department, Government of Sindh,
Presently posted at Central Prison & Correctional Facility,
Khairpur, Sindh.

20. **Mr. Muhammad Junaid**
Son of Rahoo Khan,
Muslim, Adult,
Assistant Superintendent (BPS -16),
In Prisons Department, Government of Sindh,
Presently posted at Central Prison & Correctional Facility,
Karachi, Sindh.

21. **Mr. Sanaullah Mahar**
Son of Qadir Bux Khan Mahar,
Muslim, Adult,
Assistant Superintendent (BPS -16),
In Prisons Department, Government of Sindh,
Presently posted at Central Prison & Correctional Facility,
Hyderabad, Sindh.

22. **Mr. Humayun Pervaiz,**
Son of Niaz Hussain,
Muslim, Adult,
Assistant Superintendent (BPS -16),
In Prisons Department, Government of Sindh,
Presently posted at Central Prison & Correctional Facility Hyderabad,
Sindh.

23. **Mr. Aqib Nawaz Behan**
Son of Ahmed Nawaz Behan,
Muslim, Adult,
Assistant Superintendent (BPS -16),
In Prisons Department, Government of Sindh,
Presently posted at Inspectorate General of Sindh Prisons & Corrections
Services Karachi, Sindh.

24. **Mr. Faraz Ahmed**
Son of Faiz Muhammad Channa,
Muslim, Adult,
Assistant Superintendent (BPS -16),
In Prisons Department, Government of Sindh,
Presently posted at Central Prison & Correctional Facility,
Karachi, Sindh.

25. Mr. Mujeeb-ur-Rehman
Son of Lal Muhammad,
Muslim, Adult,
Assistant Superintendent (BPS -16),
In Prisons Department, Government of Sindh,
Presently posted at Inspectorate General of Sindh Prisons & Corrections Services Karachi, Sindh.

.....**PETITIONERS**

VERSUS

1. **Province of Sindh,**
Through;
   i. Chief Secretary,
   Government of Sindh,
   Sindh Secretariat,
   Karachi.

   ii. Secretary,
   Home Department,
   Sindh Secretariat,
   Karachi.

   iii. Secretary,
   Finance Department,
   Sindh Secretariat,
   Karachi

2. **The Inspector General Sindh Prisons & Correction Services,**
Prisons Department
Government of Sindh,
Pir Illahi Bukhsh Road,
Muslimabad,
Karachi.

3. **Secretary,**
Services & General Administration Department
Government of Sindh,
Sindh Secretariat,
Karachi.

4. **Azeem Qadir** S/o Ghulam Qadir
BPS-17, Deputy Superintendent of Prison

5. **Muhammad Yaseen**
S/o Fateh Muhammad Mangan
BPS-17, Deputy Superintendent of Prison

6. **Manzoor Ali Shah**
S/o Mehboob Ali Shah
BPS-17, Deputy Superintendent of Prison

7. **Nisar Hussain**
S/o Noor Hassan Baloch
BPS-17, Deputy Superintendent of Prison

8. **Maqsood Ahmed** S/o Ghulam Qadir
BPS-17, Deputy Superintendent of Prison

9. **Muhammad Yousafuddin**
S/o Muhammad Jehangir Uddin
BPS-17, Deputy Superintendent of Prison

10. **Saeed Ahmed Soomro**
S/o Bashir Ahmed Soomro
BPS-17, Deputy Superintendent of Prison

11. **Abdul Rauf Kanhar**
S/o Ghulam Nabi
BPS-17, Deputy Superintendent of Prison

12. **Faisal Bashir S/o Bashir**
Ahmed Khan Laghari
BPS-17, Deputy Superintendent of Prison

13. **Syed Ghazanfar Ali**
S/o Quraban Ali Shah
BPS-17, Deputy Superintendent of Prison

14. **Imran Ali Gopang** S/o Anwar Ali Gopang
BPS-17, Deputy Superintendent of Prison

15. **Ghulam Sarwar Keerio** S/o Ghulam Qadir Kerio
BPS-17, Deputy Superintendent of Prison

16. **Zahir Shah** S/o Abdullah Shah
BPS-17, Deputy Superintendent of Prison

17. **Shunail Hussain Shah**
S/o Qamar Hussain Shah
BPS-17, Deputy Superintendent of Prison

18. **Naseem Ahmed Shujrah** S/o Ahsan Ali
BPS-17, Deputy Superintendent of Prison

19. **Ishtiaq Ahmed Awan** S/o Khawaja Muhammad Awan
BPS-17, Deputy Superintendent of Prison

20. **Sada Hussain** S/o Ghulam Rasool Zardari
BPS-17, Deputy Superintendent of Prison

21. **Imtiaz Ahmed Ali** S/o Dost Ali Rind
BPS-17, Deputy Superintendent of Prison

22. **Sikandar Ali** S/o Abdul Jabbar Magsi
BPS-17, Deputy Superintendent of Prison

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23. **Zulfiqar Ali** S/o Ahmed Dino Maitlo
BPS-17, Deputy Superintendent of Prison

24. **Mureed Abbas** S/o Ghulam Abbas Shaikh
BPS-17, Deputy Superintendent of Prison

25. **Allah Obhayo Dero**
S/o Muhammad Idrees Dero
BPS-16, Assistant Superintendent of Prison

26. **Muhammad Azam Shahrayani**
S/o Haji Muhammad Akram Khan
BPS-16, Assistant Superintendent of Prison

27. **Sheraz Haider**
S/o Muhammad Ayoub
BPS-16, Assistant Superintendent of Prison

28. **Nabi Dad** S/o Wali Muahammad Zardari
BPS-16, Assistant Superintendent of Prison

29. **Abdul Hameed Soomro** S/o Sajjan Soomro
BPS-16, Assistant Superintendent of Prison

30. **Hassan Ali Khoso** S/o Muhammad Ibrahim
BPS-16, Assistant Superintendent of Prison

31. **Shafqat Jabbar Arfani** S/o Abdul Jabbar
BPS-16, Assistant Superintendent of Prison

32. **Imran Ali** S/o Inayatullah Dahot
BPS-16, Assistant Superintendent of Prison

33. **Ghulam Rasool** S/o Ghulam Mustafa Mashori
BPS-16, Assistant Superintendent of Prison

34. **Abdul Rehman** S/o Qutubuddin Shaikh
BPS-16, Assistant Superintendent of Prison

All officers in Prisons Department, Government of Sindh,

Respondents No. 4 – 34 to be served through the Respondent No. 1

.....**RESPONDENTS**

PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973 READ WITH ARTICLE 187 (2) OF THE SAME

IN THE HIGH COURT OF SINDH KARACHI

Before:
Mr. Justice Naimatullah Phulpoto
Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-1406 of 2022

Mr. Maula Bakhsh Sahito
& 24 others
Petitioners through : Mr. Haider Waheed, advocate along with Mr. Shahzaib Akhtar Khan, advocate.

Respondents 1 to 3 through : Mr. Ali Safdar Depar, AAG along with Mr. Tariq Ahmed Qureshi, Additional Secretary, Prisons Home Department, Government of Sindh, Mr. Saleem Ahmed, Incharge Establishment Branch, I.G. Prisons office and and Mr. Mir Muhammad Channa, Section Officer, Prisons

Respondents 4 to 16 through : Mr. Mohsin Kadir Shahwani, advocate

Respondents 17 to 26,28, 29,32 & 33 Through : Malik Naeem Iqbal, advocate alongwith Mr. Muhammad Saleem Khaskheli, advocate

Respondent No.34 : Nemo

Dates of hearing : **01.04.2022, 11.04.2022 & 26.04.2022**
Date of order : **10.05.2022**

ORDER

Adnan-ul-Karim Memon, J. Through this Constitution Petition, the petitioners have prayed as under:

I. *Declare that the respondents No.4-34 were appointed in BPS 14 and not in BPS 16, and, that appointments in BPS 16 cannot be made other than through the SPSC as prescribed under the law.*

II. *Set aside the impugned notification dated 30.12.2021 being ultra vires, illegal, unconstitutional, void ab initio, and in contempt of orders of the Supreme Court reported as **2015 SCMR 456**.*

III. *Set aside the impugned order dated 10.11.2021 being ultra vires, illegal, unconstitutional, void ab initio, and in contempt of orders of the Supreme Court reported as **2015 SCMR 456**.*

IV. *Direct the official respondents to act upon/enforce/implement the judgment dated 12.06.2013 passed by the Honorable Supreme Court in Cr. Original Petition No.89/2011 and the judgment dated 05.01.2015 passed by the Honorable Supreme Court in Civil Review Petition No.193/2013 and others reported at **2013 SCMR 277** and **2015 SCMR 456** respectively.*

2. In principle, the petitioners have called in question the vires of the notification dated 30.12.2021, whereby the private respondents No.7, to 16 and 19 to 24 have been recommended for promotion to the post of Deputy Superintendent of Prison (BS-17), inter alia, on the ground, that the post of Deputy Superintendent of Prison, is to be filled 33% by initial appointment, through Sindh Public Service Commission (**SPSC**); and 67% by

promotion from amongst Assistant Superintendent of Prison (BS-16) having at least 5 years of service on seniority-cum-fitness basis; and the private respondents are lacking the basic qualification and eligibility to hold the post in BPS-16/17, even for their initial appointment in the year 2010 on regular basis, in terms of advertisement dated 12.07.2008 and promotion to the post of Deputy Superintendent of Prison (BS-17) vide impugned notification dated 30.12.2021, on the twice upgraded post of Assistant Superintendent of Prison (BS-14/16) under the guise of recommendation of advisor to Chief Minister Sindh on Prison Department, hence, their initial appointments in BPS-14/16 and subsequent promotion in BPS-17 are hit by Article 199 (1) (b) (ii) of the Constitution, 1973. Besides that the private respondents were not the incumbents whose post of Assistant Superintendent of Prison BPS-14 was upgraded in the year 2010; that post could be upgraded not the incumbents, however, that up-gradation was/is subject to the restructuring of the whole department and not otherwise. Further, that promotion cannot be made on the upgraded post; even the private respondents No.7, to 16, and 19 to 24 lack the length of service to be considered for promotion to the post of Deputy Superintendent of Prison (BS-17).

3. At the outset, we asked the learned AAG, to brief us on the induction of private respondents into the service of the Prison Department as Assistant Superintendent of Prison (BPS-14) and their subsequent upgradation in BPS-16 and promotion to the post of Deputy Superintendent of Prison (BS-17).

4. Mr. Ali Safdar Depar, learned AAG, firstly raised the question of maintainability of the instant petition, in terms of the ratio of the decision rendered by the Honorable Supreme Court in the case of *Khalilullah Kakar v. Provincial Police Officer*, **2021 SCMR 1171,** and *Chief Secretary Government of Punjab Lahore etc v. Ms. Shamim Usman* **2021 SCMR 1390,** however, he replied to the query and submitted that in pursuance of the advertisement published in the leading newspapers in year 2008, the private respondents were appointed as Assistant Superintendent Prison BPS-14 from the period 06.08.2010 to 14.12.2010; and, in the intervening period, the said post was upgraded to BPS-16 vide office order issued in the same year and the private respondents continued on the upgraded post in BS-16; and after acquiring requisite length of service, the private respondents No.7 to 16 and 19 to 24 were recommended for promotion as Deputy Superintendent (BPS-17), which recommendation of Departmental Promotion Committee (**DPC**) was/is within the parameters of the recruitment rules and the Constitution as well as dicta laid down by the Hon'ble Supreme Court of Pakistan in the case of *Ali Azhar Khan Baloch v. Province of Sindh* (**2015 SCMR 456**), thus no illegality has been committed by the respondent-Home Department. Per learned AAG the petitioners were appointed in the year 2020 and have only two years of service in their credit; they neither have undergone the promotion training course nor completed the required length of service of 05 years, therefore, their case cannot be placed at par with those private respondents on the premise that they fulfilled the required criteria as outlined in the recruitment rules and were rightly given promotion under the law. In support of his contentions, he heavily relied upon the comments filed on behalf of the Inspector General

of Sindh Prison and Secretary Home Department, Government of Sindh, and argued that no violation of the judgment of the Hon'ble Supreme Court of Pakistan has been made by the official respondents. He prayed for the dismissal of the instant petition.

5. Mr. Mohsin Kadir Shahwani, learned counsel for the private respondents 4 to 16, has strongly objected to the maintainability of the instant petition because of the specific bar contained in Article 212(2) of the Constitution of the Islamic Republic of Pakistan, 1973. He emphasized that the petitioners and respondents being employees of the Prison Department are civil servants and the matter of promotion of the private respondents relates to their terms and conditions of service, which particularly rests within the jurisdiction of the Sindh Service Tribunal. Therefore, the very institution of the captioned Constitutional petition was/is against the Constitutional mandate. He asserted that it is an established principle of law that the Courts assume their jurisdiction through particular law conferring a particular jurisdiction and Article 212(2) of the Constitution specifically places an embargo on all other Courts except the Service Tribunal to pass any order, or entertain any proceedings in respect of any matter relating to the terms and conditions of service of civil servants, even if there is mala fide on the part of respondents, this means that any constitutional petition ought not to be entertained by this Court in its constitutional jurisdiction under Article 199 of the Constitution, and entertaining and then proceeding with the constitutional petition amounts to defeating the express Constitutional mandate under which the Tribunal is vested with jurisdiction to deal with the matters of civil servants. Learned counsel next contended that the Honorable Supreme Court in the case of *Ali Azhar Khan Baloch* supra has held that Article 212 of the Constitution ousts the jurisdiction of High Courts and Civil Courts in respect of the matters about terms and conditions of civil servants. In other words, the provisions of Article 212 do not confer a concurrent jurisdiction to civil Courts, High Courts, and Tribunals. The ouster contemplated under the said Article is a Constitutional command and restricts the jurisdiction of this Court on the subject, which squarely falls within the exclusive domain of Tribunals. He further averred that when the law has provided an adequate remedy, constitutional jurisdiction under Article 199 of the Constitution cannot be exercised as the same has to be exercised in exceptional circumstances, which could justify invoking the said jurisdiction. He submitted that the Petition is based on disputed questions of facts; besides that, the Petitioners have not come before this Court with clean hands. He affirmed that by filing a writ of quo-warranto and/or Mandamus under Article 199 of the Constitution, a question relating to terms and conditions of service can only be determined by the concerned Tribunal and not this Court. In support of his contentions, he heavily relied upon the cases of *Province of Balochistan through Secretary Excise and Taxation Department, Civil Secretariat, Quetta and 2 others v. Murree Brewery Company Ltd. through Secretary*, **PLD 2007 886**, *Hafiz Hamdullah v. Saifullah Khan and others*, **PLD 2007 SC 52**, *Khalilullah Kakar and others v. Provincial Police Officer, Balochistan and others*, **2021 SCMR 1168**, *Sui Northern Gas Pipelines Ltd. through G.M. Hayatabad Peshawar v. Messrs Saif Textile Mills Ltd.*, **2021 SCMR 1395**, *Asadullah Rashid v. Haji*

Muhammad Muneer and others, **1998 PLC (CS) 1871**, *Province of Punjab through Secretary Communication and Works Department, Lahore through Chief Engineer (North/Central) Punjab Highway Department, Lahore v. Yasir Majeed Sheikh and others*, **2021 SCMR 624**, *Taqveem Shah v. Government of Balochistan and 2 others*, **2021 CLC 985**, and *Sanaullah Khan v. Government of Khyber Pakhtunkhwa through Secretary of Education, Peshawar and 4 others*, **2019 PLC (CS) 1215**. On merits, he submitted that at the time of advertisement published on 12.7.2008, there were 15 posts of male and 03 posts of lady Assistant Superintendent (BPS-14) in Prison Department which is attached department of Home Department of Government of Sindh, meant for initial recruitment, the applications were received and the test was conducted by the then I.G Prison Mr. Muhammad Yameen Khan, and due to his sudden demise, the process of appointment was kept at the backburner. In the meanwhile, 22 more posts of Assistant Superintendent for initial recruitment fell vacant, consequently, the Departmental Selection Committee held its meetings on 10.06.2010 and 24.12.2010 wherein it recommended 37 male and 02 female candidates for appointment against the 39 vacant posts of Assistant Superintendents. He further submitted that the private respondents did not suffer from any inherent disqualification to hold the office either in BPS-16 or the post of Deputy Superintendent (BPS-17). The Counsel contended that a writ of quo warranto is not available to one set of Civil Servants against another set of Civil Servants and if colleagues are allowed to challenge another colleague's appointment/promotion, there would be no end to this and there will be anarchy in the Civil Service structure. He further contended that if the promotion has been made and there is something wrong with such promotion, the concerned Sindh Services Tribunal is the appropriate forum to challenge it; that the Petitioners have approached this Court with ulterior motives and with mala fide intention and the relief being sought through the instant Petition may be declined. He further submitted that there are 39 posts of Deputy Superintendent of Prison in the entire Province and there is an acute shortage of the officers due to the intervention of this Court, the entire administrative department has been paralyzed. On the issue of upgradation, he submitted that the entire Prison Department was restructured including the post of Assistant Superintendent Prison in BPS-16, thus the upgradation in the year 2011 was neither person-specific nor it was obliged to any class of person. He added that the private respondents were appointed in BPS-14 and not BPS-16; that the notification dated 29.5.2015 does not apply to the appointments of private respondents which were made in the year 2010, as such that notification cannot be given retrospective effect. By explaining the aforesaid position of the case, he prayed for the dismissal of the instant petition.

6. Malik Naeem Iqbal, learned counsel for respondents 17 to 26, 28, 29, 32, and 33, *inter-alia*, contended that the petitioners were not the aggrieved persons and none of their rights were violated and they have also no locus standi or cause of action to file the captioned constitutional petition; that the post of private respondents was upgraded on the recommendation of the Finance Department Government of Sindh, after following all codal formalities, such notification was issued accordingly; that the

private respondents had no service structure and channel of promotion, therefore, the post of Assistant Superintendent Prison BPS-14 was rightly upgraded to BS-16 with retrospective effect; and, such recruitment rules were framed in the year 2015; therefore, the present matter is not meant for issuance of writs of quo warranto and/or mandamus. Learned counsel next submitted that the titled Petition cannot be allowed as per applicable service laws and the Constitution of the Islamic Republic of Pakistan, 1973. On the question of appointment of Advisor to the Chief Minister Sindh, learned counsel pointed out that this discretion has been left with the Chief Minister Sindh under the Constitution and this Court should be slow in interfering in such appointment unless the exercise of discretionary powers by the Chief Minister Sindh is blatantly arbitrary, fanciful, unlawful or ex facie violative of the settled principles of exercise of discretion. At this point, we reminded him that no fetter can be placed on the power of this Court to examine and scrutinize executive actions to determine their legality and adherence to the Constitution and law. He agreed with this proposition, however, insisted that this is not the situation to invoke the extraordinary powers conferred upon this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. Learned counsel referred to the Counter-Affidavit filed on behalf of respondents 17 to 26, 28, 29, 32, and 33 and referred to the documents relating to the budget book of 2010-2011, 2011-2012, as well as the seniority list of the officers of the Prison Department and submitted that subject post (12 in number) has been shown in the budget book in BPS-14 for Central Prison Karachi only, thus the petitioners have been working on the upgraded post as shown in the budget book discussed supra, therefore, the contentions of the petitioners that the private respondents were not the incumbents is erroneous thinking on their part. In support of his contentions, he relied upon the unreported order dated 14.02.2019 passed in **Civil Petition No.135/2018** by the Hon'ble Supreme Court of Pakistan in the case of *Ali Baksh Shaikh v. Province of Sindh Karachi and others* and submitted that this Court lacks the jurisdiction under Article 199(i) (b) (ii) of the Constitution to decide any question relating to the terms and conditions of the service of the civil servants. He also relied upon the cases of *Federal Public Service Commission through Secretary v. Anwar ul Haq (Private Secretary Islamabad and others)*, **2017 SCMR 890**, *Sarosh Haider v. Muhammad Javed Chundrigar and others*, **PLD 2014 SC 288**, *Chief Secretary, Government of Punjab, Lahore and others v. Ms. Shamim Usman*, **2021 SCMR 1390**.

7. At this stage, we reminded him that under the Constitution and Sindh Government Rules of Business, 1986, Advisor to the Chief Minister is not a Minister but only enjoys the status for just perks and privileges. Advisor to the Chief Minister cannot address the Provincial Assembly nor has any executive authority vested in him to act as the chosen representative of the public. Advisor to the Chief Minister is also not a Member of the Provincial Cabinet and cannot take part in the proceedings of the same in terms of Article 93 of the Constitution. Additionally, the Advisor to the Chief Minister provided in Article 130(11) of the Constitution is not the same as the Advisor to Prime Minister in terms of Article 193 of the Constitution. Besides that, the Advisor to Chief Minister of the province mentioned in Article 260 is excluded from the definition of Service of Pakistan; and, under

the scheme of the Constitution, the functions of the Advisor to the Chief Minister appointed under Article 130(11), are limited to the extent of advising the Chief Minister on certain matters required by him, thus they are not included in the Provincial Government in terms of the definition of Provincial Cabinet provided in Article 130 of the Constitution to be consisting of the Chief Minister and the Cabinet Ministers. Moreover, to give powers of Ministers to an unelected Advisor would be against the concept of elected Government envisaged by the Constitution. On this point he submitted that the matter of like nature is pending adjudication in the Honorable Supreme Court, therefore, propriety demands that no findings shall be given on the subject issue. In support of his contentions, he relied upon the case of *Justice Qazi Faez Isa and others v. The President of Pakistan and others*, **PLD 2021 SC 1** and unreported order dated 16.02.2017 passed by the Hon'ble Supreme Court of Pakistan in Civil Petition No.3816/2016 and Civil Petition No.77/2017. If this is the position, we restrict ourselves to dilate upon the subject point as the matter is reported to be subjudice before the Hon'ble Supreme Court of Pakistan.

8. Mr. Haider Waheed, learned counsel for the petitioners, has refuted the aforesaid stance of the respondents and submitted that this Court is competent to enforce the Judgment of the Hon'ble Supreme Court in its letter and spirit being the executing Court of the Judgments of the Hon'ble Supreme Court of Pakistan in terms of Article 187(2) of the Constitution. He asserted that once the upgradation was made, no further promotion could be given on the upgraded post under the policy and law as well as dicta laid down by the Honorable Supreme Court on the subject issue, besides that the post of Deputy Superintendent is based on 33% by initial appointment through SPSC and 67% amongst Assistant Superintendent Prison; whereas the private respondents were purportedly appointed in BPS-14 on a contract basis; and thereafter the subject post was upgraded in BPS-16, therefore, the petitioners being contract employees cannot be promoted under the service law. He further said that even if it is presumed that they were appointed on regular basis then they have not completed the five years of requisite length of service to claim promotion on the subject post under the recruitment rules notified later on. He next submitted that the promotion of the private respondents has taken place with the approval of Advisor to Chief Minister Sindh for Prisons affairs as he was/is a political figure, therefore, he has no role under the service law to approve and recommend the promotion of the Prison Department, as such the notification as well as circular dated 12.01.2022 issued by the Inspector General Sindh Prisons is a nullity in the eyes of law and liable to be annulled. On the issue of upgradation, he submitted that the Honorable Supreme Court has dealt with the implication and importance of up-gradation of the post, and it was held that "issue relating to up-gradation of civil servants can be decided by a High Court in the exercise of its constitutional jurisdiction and bar contained under Article 212(3) of the Constitution would not be attracted. The policy of up-gradation, notified by the Government, in no way, amends the terms and conditions of service of the civil servant or the Civil Servants Act and or the rules framed thereunder. The Service Tribunals have no jurisdiction to entertain the appeal involving the issue of up-gradation, as it does not form part of the terms and conditions of service of the civil servants." He went ahead by saying that up-gradation of the post is merely a financial benefit attached to up-gradation and

could not be treated as a promotion thus grade could not be awarded to the incumbent of the post, however as and when such upgraded incumbent leaves or transfers or a vacancy occurs for any reasons than the vacancy is of substantive post and not that of upgraded post and is accordingly filled up either by transfer, promotion or direct appointment as the case may be. He further added that up-gradation is carried out under a scheme and or a policy to incentivize and encourage and give financial benefits without creating additional vacancies for the higher grade, up-gradation by no standards could be treated and or considered as promotion to the higher grade, and that incumbents occupying ungraded posts retain their substantive grade. He further added that twice the up-gradation of the subject post violates the law laid down by the Honorable Supreme Court in its various pronouncements.

9. On the issue of maintainability of the instant petition, learned counsel submitted that there is no prohibition in law as to who can file the writ of quo warranto and the present case is the classic example where both the writs i.e. quo warranto and Mandamus can be issued by this Court keeping in view the peculiar facts circumstances of the case. He further submitted that the private respondents are contract employees; and, not civil servants as opined by the respondent Home Department vide summary for Chief Minister Sindh dated 29.06.2010, thus contract employees case cannot be adjudicated by the Sindh Services Tribunal under Article 212 of the Constitution read with section 4 of the Sindh Services Tribunal Act, 1973; and this Court has the only jurisdiction to entertain the matter under Article 199 of the Constitution. Learned counsel referred to the judgments/orders of the Honorable Supreme Court as discussed supra and various documents attached with the Memo of Petition and argued that this matter needs to be looked into in terms of the ratio of the judgments/orders of the Honorable Supreme Court.

10. We have heard learned counsel for the parties and perused the material available on record and case law cited at the bar.

11. To address the question of maintainability of the instant petition, in terms of the ratio of the judgment dated 01.07.2021 passed by the Hon'ble Supreme Court of Pakistan in the case of *Chief Secretary Government of Punjab Lahore, etc.* supra, whereby the Hon'ble Supreme Court was pleased to hold in paragraph 5 that High Court has no jurisdiction to entertain any proceedings relatable to the terms and conditions of service of a civil servant and can only be adjudicated upon by the Services Tribunal under the Act. There is no cavil to the proposition set forth by the Honorable Supreme Court as discussed supra. Besides that the Hon'ble Supreme Court has observed that the only exception provided under section 4(i) (b) of the Services Tribunal Act wherein appeal does not lie before Services Tribunal against an order or decision of the department, determining the fitness of a person to be appointed. Primarily, in this matter, the petitioners have called in question the vires of the notification dated 20.12.2021 whereby the Departmental Promotion Committee recommended the candidature of the aforesaid private respondents for promotion to the post of Deputy Superintendent (Prison) (BS-17) on the ground that the private

respondents were/are not eligible, fit and proper candidates to be inducted in prison service through backdoor and promoted to the post of Deputy Superintendent (Prison) (BS-17) on the analogy that initially the subject post was advertised in the year 2008 in BPS-2014 and after lapse of couple of years, the Finance Department, Government of Sindh, upgraded the post of Assistant Superintendent of Prison to BPS-16 vide office order dated 24.3.2010 with retrospective effect i.e. 01.01.2010, which explicitly show that the post in which the private respondents were considered for appointment in BPS-14 vide advertisement issued in the year 2008 was not available for them as the said post had already been upgraded before the institution of the process of appointment of the private respondents vide office order dated 24.3.2010. In this regard, on 21.6.2010 the respondent department floated a summary for Chief Minister Sindh and advised him to make the appointment on the subject posts on a contract basis, however, the Inspector General Prison Sindh, for reasons best known to him, failed to follow the orders of the competent authority and issued direct appointment letters in favor of the private respondents, which action ex-facie needs to be examined.

12. Further on the issue of maintainability, surprisingly, the Home Department vide letter dated 10.11.2021 issued another office order, whereby the post of 39 Assistant Superintendent Prison was upgraded to BPS-16 with effect from 15.12.2010 to hush up the case of beneficiaries. Keeping in view this office order the respondent Home Department issued the notification of the promotion of the private respondents, without looking into the objections of the DPC; and even the respondent department increased the number of seats originally advertised just to accommodate the beneficiaries without fresh advertisement, thus the aforesaid points need to be looked into and for the aforesaid reasons, we are of the considered view that this petition could be heard and decided on merit to see the legality and propriety of the orders passed by the official respondents from time to time on the subject appointment and promotion; Even otherwise, to qualify for the promotion, the least that is expected of an employee must have an unblemished record, and have the requisite length of service, and the availability of the vacancy. This is settled law that an employee found not fit for appointment and promotion cannot be placed at par with the other employees, and his / her case has to be treated differently; while considering an employee for promotion his / her entire service profile has to be examined. Primarily, the aforesaid points are substantial and cannot be discarded merely on the objection of the respondents about the maintainability of the instant petition thus their objection to the aforesaid points is discarded.

13. Having dealt with the issue of maintainability, the questions involved in the present petition for our determination are as follows:-

i) Whether the basic appointment of the private respondents was/is in accordance with the law; and,

ii) Whether the post of Assistant Superintendent Prison (BPS-16) could be filled through SPSC in terms of the ratio of the judgment passed by the Hon'ble

Supreme Court of Pakistan in the case of *Ali Azhar Khan Baloch vs. Province of Sindh* (**2015 SCMR 456**) and could be downgraded in BPS-14 and private respondents could be accommodated on the subject post; and,

iii) Whether, in presence of recruitment rules notified in the year 1992, the post of Assistant Superintendent Prison BS-11 could be upgraded to BS-14 and BS-16 in terms of the ratio of the judgments passed by the Honorable Supreme Court in the cases of *Ali Azhar Khan Baloch vs. Province of Sindh* (**2015 SCMR 456**), *the Government of Pakistan M/o. Railways v. Jamshed Hussain Cheema and others*, **2016 SCMR 442**, *Regional Commissioner Income Tax, Northern Region, Islamabad, and another Vs. Syed Munawar Ali and others* (**2017 PLC (C.S.) 1030**) and *Federal Public Service Commission v. Anwar-ul-Haq* (**2017 SCMR 890**); and

iv) Whether promotion could take place upon twice upgraded posts in terms of the ratio of the judgment passed by the Honorable Supreme Court in the case of *Attaullah Khan Vs. Ali Azam Afridi and others* **2021 SCMR 1979**, and,

v) Whether the private respondents have the requisite length of service to claim promotion to the post of Deputy Superintendent Prison (BPS-17) under the recruitment rules; as well as in terms of the ratio of the judgment passed by the Honorable Supreme Court in the case of *Tariq Aziz-ud-Din's Case* (**2010 SCMR 1301**), and,

vi) Whether the Advisor to the Chief Minister Sindh for Prisons Affairs was/is competent under the Sindh Civil Servants Act, 1973 and rules framed thereunder to approve the promotion of the private respondents, in the capacity of Minister, in terms of the ratio of the judgments passed by the Honorable Supreme Court in the cases of *Abdul Majeed Zafar and others. Vs. Governor of Punjab through Chief Secretary and others.* (**2007 SCMR 330**) *Ch. Zahoor Ellahi's Case* (**PLD 1978 SC 383**), *Messrs Mustafa Impex, Karachi, and others. V/s The Government of Pakistan through Secretary Finance and others.* (**PLD 2016 SC 808**), and *Tariq Aziz-ud-Din's Case* (**2010 SCMR 1301**), *Muhammad Yasin Vs. Federation of Pakistan through Secretary, Establishment Division, Islamabad and others* (**PLD 2012 SC 132**) and this Court in the cases of *Ahmad Yousaf Ali Rizvi and others Vs. Munawar Ali Butt and others.* (**PLD 2000 Karachi 333**) and *Fareed Ahmad A. Dayo Vs. Chief Minister, Sindh through Principal Secretary and 5 others* (**PLD 2017 Sindh 214**).

14. Principally, the entire exercise undertaken by the official respondents for the post of Assistant Superintendent Prisons (BPS-14) is not sustainable under the law for the reasons that before the appointment of the private respondents, the summary for Chief Minister Sindh was floated on 29.06.2010 and factual as well as the legal position on the subject appointments was brought into the knowledge of the competent authority by the then Home Secretary, Government of Sindh to the effect. Per learned counsel, this Court had already passed the restraining order in the case of employees of the Prison Department that no appointment shall be made which violates the ratio of 50% quota allocated for Assistants/Head Clerks Prisons Department in terms of recruitment rules vide the notification dated 15th January. Home Secretary also opined that the posts in BPS-16 were required to be filled in through Sindh Public Service Commission and the competent authority could order filling up the posts on a contract basis. Chief Secretary Sindh endorsed the view of the Home Secretary and suggested that when the posts were advertised, they were in BS-14 and were subsequently upgraded to BS-16. He also recommended that the selectees could be

taken in BS-14 in the first instance. The competent authority i.e Chief Minister Sindh approved the viewpoint of the Chief Secretary and Home Secretary, Sindh. Surprisingly respondent/Inspector General of Prison, Sindh in violation of law, issued the appointment orders on 16.8.2010 of the private respondents on regular basis rather than on a contract basis as per the Home Secretary's viewpoint.

15. At this juncture, we asked from learned AAG that in the advertisement published on 12.07.2008 the post of Assistant Superintendent Jail (BPS-14) only 15 posts were available then how more appointments were made against 15 vacancies. He replied to the query and submitted that initially at the time of advertisement the number of posts was mentioned as 15, but during the process of recommendation the posts were recalculated and accordingly number of posts was increased and the eligible candidates were appointed against the proportionate ratio of initial appointment, without recourse to SPSC.

16. Primarily, the stance of the respondent department is against the spirit of the law for the reason that before the 15 posts of Assistant Superintendent Jail (BPS-14) could be consumed/materialized the subject post was upgraded in BPS-16 in the year 2010 even much before the purported appointment of the private respondents in BPS-14 under the opinion of Chief Secretary Sindh which was the erroneous decision on the part of Chief Secretary and the competent authority. The initial recruitment rules of Assistant Superintendent Prison notified on 15.01.1992 reflects the following position:

Name of the posts & BPS	Method of Appointment	Minimum Academic Qualifications/Experience necessary for initial appointment	Age Limit for initial appointment Min-Max
Assistant Suptd: (BPS-11)	(i) 50% by initial recruitment. (ii) 50% by transfer from the member of service holding the post of Assistant/Head Clerk	-do-	21-28

17. Subsequently, the Government of Sindh vide office order dated 25.2.1992 upgraded the post of Assistant Superintendent Jail from BPS-11 to BPS-14, and again vide office order dated 24.03.2010 the said post was upgraded in BPS-16 with effect from 01.01.2010. Once this was done the appointment could only have been made through the process of SPSC.

18. As per minutes of the meeting of the Departmental Promotion Committee for filling up the vacant posts of Assistant Superintendent (BS-16) in Sindh Prison Department held on 01.06.2010 recommended for appointment of 30 Assistant Superintendents against 15 advertised posts and subsequently appointed all the private respondents in Prison department vide appointment orders dated 06.08.2010, however, the story did not end here and the Home Department issued another office order dated 26.02.2011 upgraded the regular incumbents on the subject posts of Assistant Superintendent Jail (BPS-16) in the light of Finance Department's advice dated 11.01.2011 with further advice to frame the recruitment rules incorporating the

upgradation and subsequently appointments made on the upgraded posts under the provision of the Sindh Civil Servants (Appointment, Promotions & Transfer) Rules, 1974, followed by the same, the Home Department vide notification dated 29.05.2015 framed the recruitment rules for the subject post as under:

Name of post with BS	Method of Appointment	Minimum Academic Qualifications Experience for initial appointments	Age Limit Min-Max
Deputy Superintendent of Prisons (BPS-17) Male/Female	i. Thirty-three percent by initial appointment through Sindh Public Service Commission ii. Sixty-Seven percent by promotion from amongst the Prisons (BPS-16) having at least five years' service as such on the seniority-cum-fitness basis. iii. The course at National Academy for Prisons Administration (NA/PA) at Lahore or Sindh Prisons Staff Training Institute at NARA, Hyderabad for promotion to (BPS-17)	Minimum Graduate Degree atleast Second Division from a recognized University, Height **Male:** Minimum girth of chest 78 cm with expansion of 3 cm" **Female** Minimum 01 Meter 70 cm Vision 6/6 both eyes	21-28
Assistant Superintendent of Prisons (BPS-16) Male/Female	i. Fifty percent by initial appointment through Sindh Public Service Commission ii. Twenty-five percent by promotion from amongst the Assistants (BPS-14) or Head Clerk (BS-14) with a minimum of five years' service as such and having successfully undergone the prescribed training course on seniority-cum-fines basis III. Twenty-five percent by promotion from amongst the Assistant Sub-Inspectors Prison (BPS-09) having alteast five years' service as such and having successfully undergone the prescribed training course on seniority-cum-fitness basis. iv. Advance Promotion Course at National Academy for Prisons Administration (NAPA) Lahore or Sindh Prisons Staff Training Institute at NARA, Hyderabad	Graduate Degree atleast in Second Division from a recognized University, Height **Male:** Minimum 01 Meter 70 cm" The minimum girth of the chest 78 cm with expansion of 3 cm" **Female** Minimum 01 Meter 70 cm Vision 6/6 both eyes	21-28

19. The respondent Home Department vide minutes of the meeting of DPC held on 23.06.2020 objected to the promotion of the private respondents in paragraph 7 with the endorsement that as per recruitment rules the post of Deputy Superintendent Prison (BPS-17) under the promotion quota is to be filled in by promotion from amongst the Assistant Superintendent Prison (BPS-16) having at least 05 years' service as such on seniority cum fitness basis and having undergone the training course at National Academy for Prisons Administration Lahore or Sindh Prison Staff Institute NARA Hyderabad for promotion to the post of Deputy Superintendent of Prison BPS-17. Paragraph No.9 explicitly shows that the seniority list of Assistant Superintendent Prisons (BPS-16) has not been properly notified/circulated by the Inspectorate General of Prison. The forum further stated that some Assistant Superintendent Prisons were appointed in BPS-14 in August 2010, whereas the post of Assistant Superintendent Prison was upgraded in BPS-16 with effect from 01.01.2010 this anomaly needed to be resolved at the first instance and it was suggested to defer the matter of promotion for compliance of the above objections by the Inspectorate General of Prison Sindh. However, they went ahead to accommodate the private respondents and issued a Notification dated 30.12.2021, for promotion to the post of Deputy Superintendent Prison (BPS-17).

20. Furthermore, the recruitment rules unambiguously show that the respondents failed and neglected to look into the basic qualification of the private respondents on the premise that they lacked the eligibility for the post applied for. It is well-settled law that eligibility cannot be relaxed under the law, which prima-facie shows that the whole recruitment process initiated by the respondent department was flawed under the law; tainted with malice to accommodate their blue-eyed. The concerned department went ahead and completed the recruitment process, which negates the basic spirit of the law and is contrary to the law laid down by the Honorable Supreme Court.

21. Touching the issue of upgradation, the Honorable Supreme Court in the case of *Federal Public Service Commission and others Vs. Anwar-ul-Haq {private Secretary } Islamabad and others* **2017 SCMR 890** has held that up-gradation is often misconstrued as a promotion. And in this case, private respondents obtained promotion to the post of Deputy Superintendent Prison (BPS-17) on the twice upgraded post, for which a selection process, in terms of the Sindh Civil Servants Act, 1973, read with Sindh Civil Servant (Appointment, Promotion, and Transfer Rules), 1974 was required to be followed, which ought not to have been bypassed by the respondents. It is well-settled law that the civil servants are appointed and/or promoted to the post and not to the grades. The Honourable Supreme Court in the case of *Ali Azhar Khan Baloch* supra in paragraph 138 has clarified the position on the subject issue and needs no further deliberation on our part.

22. It is a settled law that rules or procedures operate prospectively and not retrospective as has been done in the instant case. Surprisingly, the official respondents deviated from the normal procedure by increasing the post of Assistant Superintendent Prison which earlier was indicated in the advertisement to be 15 in number; however, the

appointments were made on 39 posts without advertisement, even without the sanction of the post, a mandatory requirement, which violates the dicta laid down by the Honourable Supreme Court in the cases of *Munawar Khan v. Niaz Muhammad*, **1993 SCMR 1287**, *Obaidullah v. Habibullah*, **PLD 1997 SC 855**, *Lt. Col. (R) Muhammad Arif Zahid v. Azad Government of the State of Jammu and Kashmir*, **2018 PLC (C.S.) Note 136**, *Muhammad Muneer Malik v. Allama Iqbal Open University*, **2016 PLC (C.S.) 896**, and *Government of Punjab through Secretary (S&GAD) Lahore and another vs. Zafar Maqbool Khan and others*, **2012 SCMR 686.**

23. Fair and meritorious appointment to public office is a requirement and spirit of law under Article 18 of the Constitution of the Islamic Republic of Pakistan 1973. The appointment in the public office can only be made through the competitive process on merit as provided under the recruitment rules and not otherwise. Appointments in the public office are to be made strictly under applicable rules and regulations without any discrimination and in a transparent manner. Thus, all appointments in the public institutions must be based on a process that is substantially and tangibly fair and within the parameters of its applicable rules, regulations, and bylaws, i.e. advertisement, written test, and interview by the recruitment/selection committee. However, if the candidate has applied based on such an admissible quota under the law he can be accommodated subject to his qualification for the post under the recruitment rules. If approved offer letter is required to be issued to the successful candidate to accept the offer within 15 days, if accepted the candidate is required to undergo a medical fitness process if he crosses that process, the department is required to issue him the appointment order, subject to completion of one year, and/or two years probationary period; and if the appointee completes the probation period, the department is required to issue a confirmation of service certificate, then his seniority shall be prepared from the date of his regular appointment in the department. In the appointment process, all the appointments were made incompetently by the selection committee which did not have the power to appoint a person in BPS-16 and even BPS-14 on a contract basis unilaterally. This act on the part of the committee established favoritism to the candidates despite the fact such posts were not sanctioned posts and are now to be filled by SPSC.

24. **The above facts lead us to the conclusion that the official respondents had** changed the entire scenario of the subject posts without completing the exercise in time, even before the up-gradation of the subject posts, already undertaken in pursuance of the original advertisement issued in the year 2008. Even otherwise the official respondents were not competent to take out the post of BS-16 from the purview of the Sindh Public Service Commission and award the same to the private respondents in a lower grade i.e. BPS-14. However, official respondents continued with the recruitment process and recommended the private respondents for appointment vide appointment letters dated 16.08.2010, without lawful justification.

25. **Besides the above, Rule 10 of the Sindh Civil Servants (Appointment, Promotion,** and Transfer) Rules, 1974, deals with the initial appointment to the posts in BPS- 16 to 22,

specifically provides that initial appointment to the posts in BS 16 to 22 shall be made (a) by the Commission based on examination or test to be conducted by the Commission if the posts fall within the purview of the Commission; or in the manner as may be determined by the Government if the posts do not fall within the purview of the Commission. Rule 3(1)(i) The Sindh Public Service Commission (Function) Rules, 1990 provides that the Commission shall, subject to other provisions of the Commission Rules 1990, conduct tests for initial recruitment to civil posts connected with the affairs of the Province in BS 16 to 22 except those specified in the Schedule. Our above view is supported by the case of *Ali Azhar Khan Baloch* supra wherein the Hon'ble Supreme Court was pleased to hold, inter alia, that the Rules of 1974 require that a post of BS-17 can only be filled through the Commission after advertisement; and, the Sindh Government and or the Competent Authority cannot bypass this mandatory requirement and substitute a parallel mechanism to appoint a person in BS 16 to 22 against the language of the Rules of 1974, which are framed under the dictates of the Act of 1973 as mandated under Article 240 of the Constitution. For the ease of convenience, paragraph 198 of the judgment pronounced in Ali Azhar Khan Baloch supra is reproduced here :

> *" 198. We may observe that on 6-5-2013, two C.M.As. numbered as 245/2013 and 247/2013, containing list of other nine persons who were also appointed as D.S.P. without recourse to the provisions contained in the Rules, 1974, along with the petitioner, were filed. The said Rules require that a post of BS-17 can only be filled through Public Service Commission after advertisement. The Sindh Government and or the Competent Authority cannot bypass this mandatory requirement and substitute a parallel mechanism to appoint a person in BS 16 to 22 against the language of these Rules, which are framed under the dictates of the Act as mandated under Article 240 of the Constitution. The Article 242 of the Constitution provides the mechanism for appointment of a Civil Servant through Public Service Commission. This Article is safety valve which ensures the transparent process of induction in the Civil Service. It provides appointment by Public Service Commission with the sole object that meritorious candidates join Civil Service. The Sindh Government through executive or legislative instruments cannot withdraw any post from the purview of the Public Service Commission as has been done in the case of the DSPs, in negation to the command of Article 242 of the Constitution. For the aforesaid reasons, we hold that the Sindh Government shall make all the appointments in BS 16 to 22 through Public Service Commission."*

26. These glaring illegalities as pointed out above on part of official respondents, which are apparent on the face of the record, cannot be condoned under the law. Besides, the official respondents acted against the law and merely allowed to increase the number of posts from 15 to 39 without re-advertising the remaining posts; however, the illegalities, as pointed out supra, continued to be perpetuated by the official respondents at the behest of beneficiaries/private respondents, therefore, impugned notifications/orders of the official respondents are not sustainable in law. As far as their issue of promotion in BPS-17 is concerned they do not qualify to be promoted as their appointment in BPS-16 lacks competence, besides other infirmities have already been noticed hereinabove.

27. The petition is allowed in the above terms.

JUDGE

JUDGE