BEFORE DEPARTMENTAL PROMOTION COMMITTEE, DISTRICT AND SESSIONS COURTS, SHAHEED BEAZIR ABAD

In the matter of seniority

Mr. Aijaz Ahmed Mangi ..... Objector

versus

Syed Zulfiqar Ali Shah ..... Respondent

ORDER

Mr. Aijaz Ahmed Mangi, Nazir (BPS-16) at Serial No.7 of the proposed seniority list has called in question seniority of Sayed Zulfiqar Ali Shah, Reader (BPS-16) at Serial No.6 of such list on the ground that he was appointed as Clerk (BPS-05) on 22.11.1990, whereas Sayed Zulfiqar Ali Shah was appointed against such post on 16.10.1993.

2. Facts giving rise to the present situation are that after his appointment in 1990, Mr. Aijaz Ahmed Mangi was awarded selection grade and his pay was fixed in BPS-7 in 1999. It may be mentioned that Sayed Zulfiqar Ali Shah kept enjoying BPS-5. They were considered for promotion in 2006, when Sayed Zulfiqar Ali Shah was promoted as Reader (BPS-7) but Mr. Aijaz Ahmed Mangi could not get nod of the Committee although he was already enjoying perks of BPS-7. The post of Clerk was upgraded in 2007 and both of them were awarded BPS-9. They were again considered for promotion in 2014 and were promoted to the post of Reader (BPS-10). In 2018, such post was upgraded and both the incumbents were awarded BPS-16, the scale they are enjoying till date.

3. The controversy over seniority surfaced when our learned predecessor issued a proposed seniority list inviting objections from the staff of different cadres, if any. After receipt of such objections Mr. Abdul Wahab Tunio, then learned Additional District & Sessions Judge-I, Shaheed Benazir Abad was assigned the task of scrutinizing objections and submitting his report.

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However, he delegated such authority to Mr. Mashooq Ali Dahiri, learned Senior Civil Judge-III. We have been informed that he gave his opinion but neither learned Additional Sessions Judge-I, submitted any report nor was the proposed seniority list finalized. Meanwhile, Mr. Abdul Wahab Tunio was transferred and Mr. Iqbal Ahmed Khwaja, honourable District & Sessions Judge, retired on attaining superannuation. After Chairman of this Committee assumed charge as District and Sessions Judge, Departmental Promotion Committee was reconstituted. It had to be reconstituted again on transfer of Mr. Hasan Ali Kalwar, learned Additional District & Sessions Judge-VI to bring it in the present composition with District and Sessions Judge as its Chairman and M/s. Zaffar Hussain Leghari, Additional Sessions Judge-IV, Shaheed Benazir Abad and Anwar Ahmed Jalbani, Senior Civil Judge-I, Shaheed Benazir Abad as members. Such Committee took up the matter for consideration so that objections filed by the staff of different cadres be decided and the proposed seniority list be finalized.

4. Objector Mr. Aijaz Ahmed Mangi submitted that since he was appointed prior to Sayed Zulfiqar Ali Shah and subsequent benefits including promotion were drawn by them at the same time, Mr. Shah has been wrongly placed ahead of him in the proposed seniority list. In reply to such contention Sayed Zulfiqar Ali Shah submitted that objections were invited at the time the proposed seniority list was published vide order dated 24.11.2021 and objections were to be filed within seven days of such publication. He submitted that despite such being the position Mr. Aijaz Ahmed Mangi filed objections after much delay, the same do not worth consideration and are liable to be rejected.

5. We have given due consideration to the submissions made and have carefully gone through the record. After hearing and deliberation one of the members of the Committee, Mr. Zaffar Hussain Leghari, learned Additional

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Sessions Judge-IV, Shaheed Benazir Abad has decided to record his separate reasons disagreeing with majority view which are reproduced at the end of these reasons. The instant order will represent the majority view of rest of the two members namely Mr. Allah Bachayo Gabol, District and Sessions Judge (Chairman) and Mr. Anwar Ahmed Jalbani, Senior Civil Judge-I (Member). Mr. Aijaz Ahmed Mangi was appointed earlier and awarded selection grade in BPS-7 prior to Sayed Zulfiqar Ali Shah, he was dropped when both the incumbents were considered for promotion in 2006. Thus, objections filed by Mr. Aijaz Ahmed Mangi have been stated to be rejected on two counts i.e. firstly, he was dropped when both incumbents were considered for promotion from Clerk to Reader (BPS-7) on 16.01.2006 and secondly, the objections are time barred.

6. There is no denial to the position that Mr. Aijaz Ahmed Mangi was appointed in 1990 and Syed Zulfiqar Ali Shah in 1993. The former was awarded selection grade BPS-7 in 1999 whereas the latter was promoted as Reader BPS-7 in 2006. Admittedly, Mr. Aijaz Ahmed Mangi was senior to Syed Zulfiqar Ali Shah at such time and, evidently, in the minutes of such D.P.C. he is placed ahead of Mr. Shah and the minutes are silent about anything adverse against Mr. Aijaz Ahmed Mangi. The promotion committee did not make any adverse observation about either the objector or Mr. Muhammad Aslam Shah (not promoted like Mr. Aijaz Ahmed) who were already enjoying BPS-7. Under these circumstances, assuming that they were either dropped or deferred may not reflect a true and fair assessment of the situation. Therefore, we need to analyze what could be the cause that both Mr. Aijaz Ahmed and Mr. Muhammad Aslam Shah were not 'declared' to be promoted. An obvious reason could be that they were already enjoying benefits of BPS-7. Perhaps this was the reason that both of them did not challenge decision of the D.P.C.

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7. From then on both incumbents got benefits of upgradation of their post in BPS-9 and promotion to the post of Reader BPS-10 in 2014 and then again upgradation of their posts to BPS-16 together in the same process. Minutes of D.P.C. held in 2014 placed the respondent ahead of the objector speaking of a seniority list prepared at the end of 2013. However, no such list in black and white is available. Observations of the D.P.C. show that they followed the verbal assertions of then CoC about the order of seniority on such occasion without there being any seniority list actually available. An interesting legal point may be, if we assume that Mr. Zulfiqar Ali Shah was promoted and Mr. Aijaz as well as Mr. Aslam were dropped, then why they were on the 'same list' when their cases were considered for promotion in 2014, particularly when Rule 9(1) of the Sindh Civil Servants (Probation, Confirmation and Seniority) Rules, 1975 (Rules of 1975) requires that in each "cadre" in a department there shall be a separate seniority list of a group of civil servants doing similar duties and performing similar functions and for whose appointment same qualification and experience have been laid down. This tends to show that they were treated at par and under such circumstances putting Mr. Zulfiqar Ali Shah ahead of the objector could not be justified specifically in presence of minutes of D.P.C. dated 11.12.2014 which provide that no inquiry was pending nor was there any red entry the service book of Mr. Aijaz Ahmed Mangi.

8. Rule 9(2) of the Rules of 1975 requires that the appointing authority shall, in the month of January every year, cause to be prepared, or, as the case may be, revised, the seniority list under sub-rule (1). No such list appears to have been prepared or revised as none is available when this Committee took up the matter afresh to consider and decide objections in different cadres. No list could, therefore, be assumed to exist when cases of the objector and the respondent were considered for promotion in 2014. Without prejudice to the above discussion, even if it is assumed that the objector was not promoted on

his turn and the respondent was, the former is entitled to seniority over the latter in view of Rule 13 of the Rules of 1975 which reads as follows:-

> *"13. (1) A civil servant, who is not promoted on his turn on the ground that—*
>
> *(i) his seniority is under dispute or is not determined; or*
> *(ii) he is on deputation, training or leave; or*
> *(iii) disciplinary proceedings are pending against him; or*
> *(iv) he is not considered for promotion for any reason other than his unfitness for promotion;*
>
> *shall, on subsequent promotion, subject to any order made by the competent authority in this behalf for the purpose of inter se seniority in the higher post, be deemed to have been promoted in the same batch as his juniors.*
>
> *(2) A Civil Servant declining to avail of benefit of order of his promotion shall, on his subsequent promotion, rank junior, in the higher post to shoe who may have been promoted earlier as a result of his having declined to avail the benefit of such promotion."*

9. According to the above rule, the only thing which may affect the objector's claim may be his declining to avail of benefit of order of his promotion but this is not the case. Mr. Aijaz Ahmed Mangi never declined to avail promotion. We have also examined Sindh Judicial Staff Service Rules, 1992 (Rules of 1992) and have found nothing inconsistent to Rules of 1975 as far as determination of seniority is concerned. Rule 11 of the Rules of 1992 which deals with seniority of judicial staff, inter alia, provides that seniority inter se of the members of the service in various grades shall be determined:-

(a) in the case of members appointed by initial recruitment, in accordance with the order of merit assigned by the District Judge provided that persons selected for service in an earlier selection shall rank senior to the persons selected in a later selection;

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The objector does not have any seniority dispute with any batch-mate appointed by initial appointment in 1990 so that order of merit by the District Judge may be seen. However, the proviso to the above rule supports case of the objector on account of his earlier selection in service as respondent Syed Zulfiqar Ali Shah was selected and appointed in 1993. Another important part of the above Rule is Explanation-II which provides that if a junior officer in a lower grade is promoted to a higher grade by superseding a senior officer and subsequently that officer is also promoted, the officer promoted first shall rank senior to the officer promoted subsequently. Keeping in view the peculiar facts and circumstances, this too is not applicable. It is not that the respondent was promoted to a higher rank and the objector was promoted to the same rank subsequently. This observation is supported by the fact that from BPS-7 to BPS-9 both were upgraded in the same process and then were promoted to the post of Reader in BPS-10 at one and the same time which shows that they were in the same cadre. The respondent could have been given benefit of Explanation-II to Rule 11 of the Rules of 1992 only when separate seniority lists of each cadre had been prepared and his case had been considered for upgradation and promotion distinctly but that never happened and the objector was treated at par and considered in the same grade and cadre at all such occasions.

10. Coming to the question of limitation, it may be observed that the seniority dispute to is still before a Departmental Promotion Committee constituted by the appointing authority. We have not found any provision providing for a limitation to claim one's own seniority to challenge someone else's. We are, however, conscious that any such claim or challenge must be within a reasonable time. There has been enough discussion above that no separate seniority lists within the meaning Rule 9 were ever prepared, maintained or revised. None was available except the draft/proposed list

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issued by my learned predecessor inviting objections within seven days. One of the objections by the respondent is that the objections are belated. We are, however, of the view the objector is not the only one who raised objections. A number of other members of staff even in other cadres have raised such objections. It is pertinent to mention that when it was decided that objections to the proposed list would be heard and decided by the Appointment and Promotion Committee, objectors and affected in all the cadres as also those objected against were called in a meeting and once again objections were invited from those who had not so far filed the same so that the list could be finalized once for all in accordance with the principles of natural justice. Thus, some objectors in other cadres as well as Mr. Aijaz Ahmed Mangi filed objections and it was decided that they would be taken up cadre wise. Under such circumstances, the objections could not be termed belated or barred by limitation.

11. Upshot of the above discussion is that the objector Mr. Aijaz Ahmed Mangi is entitled to seniority ahead of respondent Syed Zulfiqar Ali Shah.

Announced on 18.05.2024.

(Allah Bachayo Gabol)
District & Sessions Judge/
Chairman D.P.C.
Shaheed Benazir Abad

(Anwar Ahmed Jalbani)
Senior Civil Judge-I, SBA
Member, D.P.C.
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SEPARATE REASONS OF MR. ZAFFAR HUSSAIN LEGHARI, MEMBER

I have privilege to read reasons of my learned brothers and with utmost respect and regards I hereby give some separate dissenting view in this matter. The objections raised by Mr. Aijaz Ali Mangi in BPS-16 at serial No: 07 and reply thereon filed by Mr. Zulfiquar Ali Shah BPS-16 at serial No.06 shows that Mr.Aijaz Ali Mangi has claimed seniority from his date of appointment on 22.11.1990 and sated that Mr. Zulfiquar Ali Shah was appointed on

16.10.1993. He has added that they were promoted on 11.12.2014 so that he may be given seniority at Sr.No.06. Mr. Zulfiquar Ali Shah has filed counter objections mentioning therein that said objections are filed with delay without justification and plausible explanation. He has also stated that in DPC held on 15.01.2009 Mr. Aijaz Mangi was dropped and did not promoted as reader. He prayed that objections filed with delay of 02 years, 03 months and 19 days without justification may be rejected. The perusal of record reveals that Mr. Aijaz Ali was appointed on 22.11.1990 as clerk in BPS-05. Mr. Syed Zulfiquar Ali Shah was also appointed as clerk on 14.10.1993. Their service record as per service book shows that in year 1999 pay of Mr. Aijaz Ali Mangi was fixed and he was given selection grade BPS 07. Whereas, on 20.01.2005 pay of Mr. Syed Zulfiquar Ali Shah was also fixed in BPS-07 and he was given such selection grade BPS-07. The record reveals that on 19.01.2006 meeting of departmental promotion committee was held, whereby, cases of both parties were sent for promotion from BPS-05 to BPS-07 and Mr. Zulfiquar Ali Shah was promoted from BPS-05 to BPS-07. However, in office order there is nothing mentioned that Muhammad Hussain Rind, Muhammad Aslam Shah and Aijaz Ali Mangi were either dropped, differed or presumed to have been in BPS-07 and such justification may be in minutes of meeting of departmental promotion committee but said record is not available in office file and even parties have not produced said important record.

2. The perusal of further record reveals that Mr. Aijaz Ali Mangi was given BPS-09 when post of clerk was upgraded by Govt. of Sindh. Mr. Aijaz Ali Mangi was first time considered in DPC meeting held on 11.12.2014 and he was promoted from BPS-09 to BPS-10. Whereas, on 16.01.2006 Mr. Zulfiquar Shah was promoted from BPS-05 to BPS-07 and on up gradation of his post he was given BPS-09, thereafter, in same DPC meeting held on 11.12.2014 he was

promoted from BPS-09 to BPS-10. Their posts again up graded from BPS-10 to BPS-16 in year 2017.

3. The perusal of record reveals that Mr. Syed Zulfiquar Ali Shah was promoted from BPS-05 to BPS-07 and then BPS-09 to BPS-10, whereas, Mr. Aijaz Ali Mangi has once been promoted from BPS-09 to BPS-10 and otherwise his post was either upgraded or he got selection grade without any promotion. The record reveals that till promotion from BPS-09 to BPS-10 in year 2014 Mr. Aijaz Ali Mangi has performed his duties as clerk, whereas, on first promotion Mr. Syed Zulfiquar Ali Shah was assigned job of reader/sarishtedar. The perusal of minutes of meeting of DPC held on 11.12.2014 shows that approved seniority list was prepared in year 2013, whereby, Mr. Syed Zulfiquar Ali Shah has shown senior from Muhammad Aslam Shah and Aijaz Ahmed Mangi. Though the Mr. Muhammad Aslam Shah has withdrawn his promotion but again Mr. Syed Zulfiquar Ali Shah was shown to have been senior from Mr. Aijaz Ali Mangi as per minutes of meeting.

4. As result of above discussed reasons I am of humble opinion that Mr. Syed Zulfiquar Ali Shah was promoted from BPS-05 to BPS-07 vide office order dated 19.01.2006 on recommendation of departmental promotion committee. Whereas, Mr. Aijaz Ali Mangi was either differed or dropped and later he has remained junior to Mr. Zulfiquar Ali Shah and even after seniority list prepared and approved in 2013 and DPC meeting held thereon it reveals that Mr. Aijaz Ali Mangi was junior even from Muhammad Aslam Shah but he did not raised any objection at that time. It is not first time that in proposed seniority lists he has been shown junior from Mr. Zulfiquar Ali Shah. The perusal of record also reveals that in service book of both parties there is sequence of their service record and otherwise most important record viz. final seniority lists and minutes of meetings of each departmental promotion committee are missing in record. At this stage for sake of arguments if it is assumed that on

19.01.2006 Mr. Aijaz Ali Mangi was presumed in BPS-07 because of his pay and allowance for selection grade and then post was upgraded in BPS-09. Even then on his turn he should have been promoted from BPS-05 to BPS-07 or BPS-07 to BPS-09. Above all definite right of Mr. Zulfiquar Ali Shah cannot be violated on presumption and assumption. The applicant has failed to satisfy that why he was marked junior to Mr. Zulfiquar Ali Shah and whey he has remained silent for considerable period without availing legal remedy. Therefore, at this stage his objections are not sustainable and it is hereby rejected.

(Zaffar Hussain Leghari)
Additional Sessions Judge-IV
Member, D.P.C.

MAJORITY ORDER OF THE COMMITTEE

In view of the finding of majority view, order of the Committee is as follows. Since Mr. Ghulam Hussain has been promoted as Office Superintendent (BPS-17) and M/s. Shafqat Hussain, Muhammad Jameel and Muhammad Ali have retired, the seniority list in respect of Cadre of Readers/COCs/Nazirs/Assistants (BPS-16) shall be finalized as follows:-

1. Mr. Allah Dino Kerio
2. Mr. Aijaz Ali Mangi
3. Mr. Syed Zulfiqar Ali Shah
4. Mr. Iqbal Hussain so on and so forth

A copy of this order shall be pasted on the Notice Board. Office Superintendent is directed to finalize the list and paste a copy thereof on the Notice Board.

Announced on 18.05.2024.

(Allah Bachayo Gabol)
District & Sessions Judge/
Chairman D.P.C.
Shaheed Benazir Abad

(Anwar Ahmed Jalbani)
Senior Civil Judge-I, SBA
Member, D.P.C.

OFFICE OF THE DISTRICT & SESSIONS JUDGE, SHAHEED BENAZIR ABAD.
NO.EB/DPC/SR. LIST/- 3817 OF 2024, Dated: 27.05.2024

In view of order dated 18.05.2024, passed by the Departmental Promotion Committee, District & Sessions Court, Shaheed Benazir Abad, headed by the undersigned being Chairman and two members viz. M/s. Zaffar Hussain Leghari, learned Additional District & Sessions Judge-IV, Shaheed Benazir Abad and Anwar Ahmed, learned Senior Civil Judge/ Assistant Sessions Judge-I, Shaheed Benazir Abad, the seniority list for the Cadre of Readers, C.O.Cs, Nazirs, Assistant BPS-16 is finalized as under:-

S. #	Name of Employees	Designation	Date of Birth	Date of appointment as Jr. Clerk	Date of Promotion as Reader/ C.OC/Nazir/ Assistt: BPS -16	Date of Retirement
1.	Mr. Allah Dino Keerio.	Reader	16-01-1967	15.02.1988	03.02.2006	15.01.2027
2.	Mr. Aijaz Ahmed Mangi	Nazir	21.09.1969	22.11.1990	11.12.2014	20.09.2029
3.	Mr. Syed Zulfiqar Ali Shah	Reader	20.12.1969	16.10.1993	11.12.2014	19.12.2029
4.	Mr. Iqbal Hussain	Reader	26.08.1970	12.10.1992	23.12.2015	25.08.2030
5.	Mr. Khandan Sahito	Nazir	05.06.1970	07.05.1994	23.12.2015	04.06.2030
6.	Mr. Muhammad Essa Kalhoro	Reader	01.09.1973	01.09.1994	23.12.2015	31.08.2033
7.	Mr. Roshan Ali Sahito Transferred from Naushehro Feroze on 09.02.1995.	Accountant	01.05.1969	18.05.1993	23.12.2015	30.04.2029
8.	Mr. Ghulam Farooque	Reader	01.02.1971	17.10.1993	23.12.2015	31.01.2031
9.	Mr. Ali Bux Memon	Reader	01.11.1972	07.02.1995	23.12.2015	31.10.2032
10.	Mr. Abdul Sattar Memon Transferred from Karachi on 19.02.1995.	Reader	10.08.1970	21.11.1990	23.11.2015	09.08.2030
11.	Mr. Habibullah Rajpar	Reader	07.02.1970	06.12.1995	23.12.2015	06.02.2030
12.	Mr.Tariq Kamal Arain	Reader	15.08.1975	16.06.1996	23.12.2015	14.08.2035
13.	Mr. Mushtaq Ahmed Bhurt	Assistant I.D Branch / Reader	01.03.1976	09.08.1997	25.05.2019	29.02.2036
14.	Mr. Imdad Daudi	Nazir I.D Br.	15.04.1974	09.08.1997	25.05.2019	14.04.2034
15.	Mr. Nouman Ahmed Siddique	Reader	17.07.1975	18.12.1997	25.05.2019	16.07.2035
16.	Mr. Muhammad Hussain Rind	Reader	28.04.1966	25.01.1993	14.10.2020	27.04.2026
17.	Mr. Ghulam Mustafa Keerio	Reader	01.07.1968	16.06.1996	14.10.2020	30.06.2028

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(Allah Bachayo Gabol)
District & Sessions Judge,
Shaheed Benazir Abad.

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