FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
JUSTICE AMIN-UD-DIN KHAN, CHIEF JUSTICE
JUSTICE AAMER FAROOQ

C.P.L.A. Nos.5 AND 6 OF 2024
(Against judgment dated 03.11.2023, passed by the High Court of Balochistan, Quetta in C.Ps. No.1586 and 1587 of 2022)

Muhammad Ilyas and others …*Petitioner(s)*
(in both cases)

Versus

Government of Balochistan through Chief Secretary, Quetta and others …*Respondent(s)*
(in both cases)

For the Petitioner(s)	:	Khawaja Haris Ahmad, Senior ASC
For the Respondent(s)	:	M/s Tahir Iqbal Khattak, Amjad Khan and Zahoor Ahmed Baloch, Addl. AGs, Balochistan *(for respondent Nos.1 & 2)* Mr. Muhammad Shoaib Shaheen, ASC *(Assisted by Barrister Hassan Shoaib, Adv.)* Syed Rifaqat Hussain Shah, AOR *(for respondent Nos.3 to 8)* Mr. Amanullah Kanrani, ASC *(for respondent Nos.30, 37 & 40)*
Date of Hearing	:	06.07.2026

JUDGMENT OF THE COURT

JUSTICE AAMER FAROOQ: This judgment shall decide the captioned petitions as common questions of law are involved.

2. The genesis of the controversy in hand lies in the proposal initiated by the Government of Balochistan in March 2001 to establish four managerial groups within the provincial civil service structure, on the pattern of the Balochistan Civil Service (Executive Branch) ("**BCS**") and the Balochistan Secretariat Service (Secretariat Branch) ("**BSS**"). The matter was placed before the Provincial Cabinet of Balochistan in

March 2001; however, the Services and General Administration Department ("**S&GAD**") objected on the ground that it had not been consulted, and that the requisite input from the Health, Education, and Finance Departments had not been obtained. It was suggested that S&GAD would take up the matter with the relevant departments and that 25 posts would be created for each category. Following due deliberations and the completion of this exercise, the Provincial Cabinet, on 30.06.2001, approved the creation of two groups, *viz.* the Planning and Economics Group, and the Finance and Accounts Group, and it was also decided that 50 officers in BS-17 would be inducted in each group through a competitive examination to be conducted by the Balochistan Public Service Commission ("**BPSC**"). The appointments were made accordingly, and the personnel so appointed got their training from Balochistan Provincial Civil Service Academy. Pursuant to the decision of the Government, S&GAD was mandated to frame rules for each service group; accordingly, the Balochistan Finance & Accounts Group Service Rules, 2001, and the Balochistan Planning and Economist Group Service Rules, 2001, were framed and promulgated on 04.08.2001. The posts in BS-17 were designated as Assistant Executive Officers ("**AEOs**") (Planning and Economics) and AEOs (Finance & Accounts).

3. The appointments were made in accordance with the Balochistan Civil Servants (appointment, promotion and Transfer) Rules, 1979 and the successful candidates were notified on 02.07.2002. Subsequently, the Finance Department raised objections regarding the induction and creation of these groups, on the basis of which S&GAD issued a policy notification on 30.09.2003. Since the service structure of the new

inductees remained ambiguous, an amendment was made on 21.11.2005, providing avenues for further promotion. Owing to the objections raised by the Finance Department and S&GAD, the future of the AEOs so appointed remained uncertain. Eventually, it was decided that these employees would be absorbed into the BCS and BSS cadres. Hence, in 2008, the same was done through Notification dated 03.04.2008. Meanwhile, the judgments of the Supreme Court were handed down in *contempt proceedings against Chief Secretary, Sindh and others (2013 SCMR 1752)*, and in *Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456)*; whereafter, in compliance of the order dated 15.11.2016, the earlier notification of 2008 was withdrawn, and the petitioners were directed to report to S&GAD for further orders.

4. It is pertinent to observe that between the period of their absorption into BCS/BSS and the subsequent withdrawal of the notification, the petitioners performed duties in BS-17, BS-18, and, in certain instances, in BS-19. The Notification dated 15.12.2016, whereby the absorption was withdrawn and the same was challenged by the AEOs of both erstwhile groups before the High Court of Balochistan in C.Ps. No. 1163 and 1172 of 2016. The referred petitions were dismissed as not maintainable. The High Court's judgment was subsequently assailed before the Supreme Court, but the appeals were dismissed on merits vide judgment dated 25.09.2017. Meanwhile, the Government of Balochistan prepared a working paper for the approval of the Chief Minister to create posts of Officer on Special Duty ("**OSD**") in BS-18 within S&GAD, to facilitate the release of salaries for the AEOs, alongside a proposal for the restructuring and re-organization of a third cadre under the administrative control of S&GAD. A final decision was

taken on 24.10.2017, wherein the Chief Secretary, Balochistan was directed to examine the matter in light of the relevant rules and the civil service structure. Pursuant to the decision of the Provincial Cabinet, a summary was forwarded to the then Chief Minister of Balochistan. After the approval of the Finance Department, S&GAD issued a Notification dated 30.11.2017, whereby 71 posts of OSD (BS-17) were created to release the salaries of the AEOs with effect from 27.03.2017. On 18.12.2017, the Finance Department, Government of Balochistan, accorded sanction for the *ab initio* abolition of 33 posts of AEOs (BS-17) (Planning and Economics) and 37 posts of AEOs in the Finance Department during the financial year 2017-18. In supersession of the earlier Notification dated 30.11.2017, another Notification was issued on 12.02.2018, whereby 71 posts of OSD (BS-18) were created for withdrawal of salaries of AEOs with effect from 27.03.2017. Meanwhile, the AEOs filed review petitions (**C.R.P. Nos. 94 and 95 of 2020**) before the Supreme Court of Pakistan. In the referred review applications, **CMA No. 1199 of 2020** was also filed for permission to argue the review petitions. The Supreme Court, on 29.03.2022, disposed of the review applications with observation that the AEOs be accommodated in line with the relevant laws, particularly Section 11-A of the Balochistan Civil Servants Act, 1974 ("**Act of 1974**"), and directed the Government to frame a policy with an open mind so that they may be adjusted accordingly.

5. Following the decision in the review applications, the Government of Balochistan, on 08.09.2022, decided to restore the merger of the AEOs into BCS/BSS under Section 11-A of the Act of 1974, instead of invoking Rule 9 of the erstwhile Balochistan Civil Servants

(Appointment, Promotion and Transfer) Rules, 1979. Accordingly, a Notification to this effect was issued on 01.10.2022. The Notification dated 01.10.2022 was challenged before the High Court of Balochistan by way of petitions under Article 199 of the Constitution. The High Court allowed the referred petitions and set aside the Notification dated 01.10.2022, hence the instant petitions.

6. *Khawaja Haris Ahmed,* Senior ASC, appearing on behalf of the petitioners, *inter alia*, contended that the particular question involved in the instant petitions is whether the petitioners (AEOs) transfer to and subsequent absorption into the BCS and BSS cadres was legally valid under the civil service laws applicable to the Province of Balochistan. He argued that the petitioners before this Court are civil servants for all legal and practical purposes, having acquired the referred status through valid appointments made pursuant to the civil service laws of Balochistan. In this regard, he referred to the advertisement and other related documents to substantiate his argument and took the Court through the history of the case to demonstrate that all statutory requirements were fulfilled for the petitioners to acquire the status of civil servants, making them no different from civil servants appointed or serving in other provincial cadres. He further argued that the impugned judgment misreads and misinterprets Section 11-A of the Act of 1974, inasmuch as the High Court erroneously held that the said section is only attracted where the Government has rendered a specific decision to abolish a post. He maintained that even if this observation were taken to be correct, the Government of Balochistan had, on 24.10.2017, decided to convert the posts of AEOs in the Finance Department and the Planning and Economics Division into OSD posts within S&GAD,

which resulted in the *ab initio* abolition of the posts of AEOs via Notification dated 18-12-2017, thereby completely satisfying the prerequisites of Section 11-A of the Act. He further contended that no prejudice would be caused to any regular officer within the BCS or BSS cadres, as the absorbed AEOs/petitioners, in line with the principles laid down by the Supreme Court in *contempt proceedings against Chief Secretary, Sindh and others* (***2013 SCMR 1752***), would take their seniority at the bottom of the respective lists. Learned counsel also made reference to cases reported as *Ali Azhar Khan Baloch and others vs. Province of Sindh and others (2015 SCMR 456); Syed Mahmood Akhtar Naqvi and others vs. Federation of Pakistan and others (PLD 2013 SC 195); Sajjad Ahmad Javed Bhatti vs. Federation of Pakistan through Secretary Establishment Division, Islamabad and others (2009 SCMR 1448); Abdul Hameed Anjum and others vs. Federation of Pakistan and others (PLD 2010 SC 857); Regional Commissioner Income Tax, Northern Region, Islamabad and another vs. Syed Munawar Ali and others (2016 SCMR 859).*

7. The learned Additional Advocate General, Balochistan supported the contentions advanced by the learned counsel for the petitioners and submitted that the Government of Balochistan has already resolved to absorb the petitioners into BCS and BSS cadres. He further argued that no separate notification of abolition was required under the circumstances, particularly since the notification regarding the *ab initio* abolition of the posts and the notification designating the petitioners as OSDs for salary purposes had already been issued.

8. Learned counsel for the private respondents vehemently contested the petitions and submitted that while they have no grievance

regarding the posting of the petitioners as OSDs or the creation of a separate management group, the petitioners cannot legally be absorbed into the BCS or BSS cadres. However, the learned counsel for the private respondents could not substantiate as to what prejudice or grievance would be caused to the civil servants already working in the said cadres, especially in light of the settled principles of the Supreme Court that civil servants who are absorbed into a new cadre at a later date take their seniority at the bottom of the respective seniority list.

9. Arguments advanced by the learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

10. The factually background leading to filing of the instant petitions has been mentioned in the preceding paragraphs, hence need not be reproduced.

11. The sole question for determination before this Court is whether the Notification dated 01.10.2022, issued by the Government of Balochistan vis-à-vis the absorption of the petitioners into BCS and BSS cadres, violates the mandate of Section 11-A of the Act of 1974. For ease of convenience, the relevant provision of law is reproduced below:

> *"Section 11-A.* ***Absorption of civil servants rendered surplus.*** *Notwithstanding anything contained in this act, the rules, agreement, contract or the terms and conditions of service, a civil servant who is rendered surplus as a result of re-organization or abolition of a department, office or abolition of a post in pursuance of any government decision may be appointed to a post, carrying basic pay scale equal to the post held by him before such appointment, if he possesses the qualifications and fulfils other conditions applicable to that post:*

Provided that where no equivalent post is available, he may be offered a lower post in such manner, and subject to such conditions, as may be prescribed and where such civil servant is appointed to a lower post the pay being drawn by him in the higher post immediately preceding his appointment to a lower post shall remain protected."

A plain reading of the aforementioned provision shows that it starts with a non-obstante clause, providing that whenever a civil servant is rendered surplus as a result of the re-organization or abolition of a department, office, or post pursuant to a government decision, such civil servant may be appointed to a post carrying a basic pay scale equivalent to the one held immediately prior to such appointment, provided they possess the requisite qualifications and fulfil the criteria applicable to the new post. The proviso further provides that if an equivalent post is unavailable, the civil servant may be offered a lower post under prescribed conditions, but his salary drawn by him at a higher post shall be protected. Thus, Section 11-A of the Act clearly empowers the Government to absorb surplus personnel into other departments or cadres when structural reorganization, administrative restructuring, or the abolition of an office takes place. It is emphasised and reiterated that following eventualities shall attract the application of section 11-A:

a. Reorganization;
b. Abolition of a department;
c. Abolition of an office; or
d. Abolition of a post,

In pursuance of a government decision. The civil servant may then be appointed to an equivalent post, provided he possesses the requisite qualifications and fulfils the other conditions applicable to the post.

Where equivalent post is unavailable, the provision contemplates offering a lower post with the protection of the pay previously drawn, subject to the prescribed manner and conditions.

12. The learned High Court observed that there was no formal or valid abolition of the two management groups to which the petitioners were originally appointed, hence the requirements of Section 11-A were not fulfilled. We do not endorse the referred findings of the learned High Court, inasmuch as the factual matrix as reproduced above clearly stipulates that the two groups which were created, *viz.* Finance and Accounts Group and Planning and Economics Group, underwent structural modifications, and, in this regard, notifications were issued time and again. Firstly, the Notification dated 18.12.2017, issued by the Finance Department, explicitly sanctioned the *ab initio* abolition of the posts of AEOs. The learned High Court has rendered a finding that this notification could not form a valid legal basis for absorption, holding it to be hit by the principles laid down in *Mustafa Impex v. Government of Pakistan* (**PLD 2016 SC 808**), which clarifies that the "Provincial Government" signifies the Chief Minister and the Cabinet, and cannot be substituted by the Finance Department acting independently. While the learned High Court might have been right to the extent of abolition, but it failed to appreciate the broader context and history of institutional reorganization governing these two cadres, inasmuch as since their creation these groups faced severe administrative instability, resulting in the petitioners being designated as OSDs in BS-17 solely for the disbursement of their salaries, following repeated executive sanctions aimed at restructuring the groups and adjusting their officers within the BCS or BSS cadres. Even otherwise, when the Government of

Balochistan issued the Notification dated 01.10.2022, it did so on the basis of a deliberate executive policy decision to absorb the petitioners into BCS/BSS, and implicitly endorse the policy of Finance Department vis-a-vis abolition of post of AEOs in two groups created in 2001. Even before this Court, the Government of Balochistan has taken a categoric stance that they stand by their decision for absorption. We fail to understand what prejudice would be caused by this decision to the incumbents of the BCS and BSS cadres, inasmuch as their seniority would not be affected. In this behalf, the Supreme Court in *2013 SCMR 1752 supra* laid down the guidelines mentioned in paragraph-126, which are as follows: -

> *"(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 which is violative of the scheme of civil*

> *service law as provided under Articles 240 and 242 of the Constitution."*

It is very clear from the above that seniority of civil servants existing in a cadre is not prejudiced by absorption of a new incumbent.

13. We feel that the learned High Court erred in taking a very constricted and erroneous view of Section 11-A of the Act and solely relied on the concept of absorption and not reading the other circumstances provided in Section 11-A vis-a-vis the transfer/absorption in another cadre. As noted above, the instant case involves a clear instance of organizational restructuring combined with the abolition of posts, which fully warranted the executive decision by Government of Balochistan to absorb the petitioners into the BCS and BSS cadres. Consequently, the decision of the learned High Court is not tenable in light of the above-mentioned law and facts.

14. For the above reasons, instant petitions are converted into appeals which are allowed; consequently, impugned judgment dated 03.11.2023, passed in CPs No. 1586 and 1587 of 2022 is set-aside. As a result whereof, writ petitions filed by the private respondents stand dismissed. No order as to costs.

Chief Justice

Judge

ANNOUNCED IN OPEN COURT ON 19.11.2026

Judge

Islamabad
Zawar/*
APPROVED FOR REPORTING