

Judgment Sheet

**LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

Writ Petition No.15682 of 2026

Muhammad Iqbal Javaid & another

Vs.

Secretary Government of the Punjab etc.

J U D G M E N T

Date of Hearing	19.06.2026
Petitioners by	Mr. Allah Nawaz Khosa, Advocate.
Respondents No.1 & 2 by	Ch. Awais Ahmad Qazi, Addl. Advocate General, Punjab along with Moazzam Ali Law Officer.

MALIK MUHAMMAD AWAIS KHALID, J. The

petitioners have filed instant constitutional petition with the following prayer:-

"Declare that the impugned order dated 19.02.2026 passed by Respondent No.1, whereby the lawful request of the petitioners for grant of pensionary benefits in pursuance of their retirement notification dated 04.11.2023 has been declined, is without lawful authority, arbitrary and of no legal effect, and the same may kindly be set aside through a writ in the nature of Certiorari.

ii. Issue a writ in the nature of Mandamus directing the respondents to grant and release the pensionary benefits of the petitioners on the basis of the upgraded/re-designated posts from which they lawfully retired, in accordance with retirement notification dated 04.11.2023.

Allah Nawaz Khosa

iii. It is further humbly prayed that this honorable court may kindly suspend the operation of the impugned order dated 19.02.2026 during the pendency of writ petition, in the interest of justice and equity

iv. Grant any other relief deemed just and appropriate in the circumstances of the case."

Instant constitutional petition has been filed by the petitioners assailing the legality of impugned order dated 19.02.2026, whereby respondent No.1 declined the request of the petitioners for grant of pensionary benefits in accordance with their upgraded/re-designated posts from which they retired vide notification dated 04.11.2023.

2. Briefly stated, the facts necessary for adjudication of the present petition are that the Government of Punjab, through Notification dated 24.11.2011, reorganized the Paramedics Cadre under the 4-Tier Allied Health Services Structure for Clinical and Primary Health Care throughout the Province. In pursuance thereof, the petitioners were upgraded and re-designated in the year 2015 by the competent authority after due scrutiny and approval of the Departmental Committee. Thereafter, the petitioners continuously served against the upgraded posts without any objection from the respondents and ultimately retired from service upon attaining the age of superannuation, vide retirement notification dated 04.11.2023. However, despite retirement from the upgraded posts, pensionary benefits were not released accordingly. Earlier, the petitioners approached this Court through Writ Petition No.10078 of 2024, which was decided on 23.10.2025 with directions to the respondents to reconsider the matter in accordance with law. Subsequently, respondent No.1 passed impugned order dated 19.02.2026 whereby the claim of the petitioners was declined on the ground that the earlier

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upgradation was not in accordance with law. Hence, the instant petition.

3. Learned counsel for the petitioners submits that the impugned order dated 19.02.2026 is arbitrary, illegal and without lawful authority. He contends that the petitioners were lawfully upgraded and re-designated in the year 2015 in pursuance of the Government policy embodied in Notification dated 24.11.2011 and continued to perform duties on the upgraded posts throughout their service career without any objection from the respondents. He further submits that once the petitioners had validly retired from the upgraded posts vide notification dated 04.11.2023, vested and accrued rights stood created in their favour which could not subsequently be withdrawn or defeated. He further argues that the doctrine of past and closed transaction as well as *locus poenitentiae* squarely applies to the present case.

4. In support of his contentions, learned counsel for the petitioners has relied upon judgment rendered in Writ Petition No.6190 of 2023 titled "Tariq Mahmood & 13 others vs. Government of Punjab & others" decided on 16.06.2025, at Bahawalpur Bench of this Court, wherein this Court held that once rights have accrued in favour of employees pursuant to implementation of policy decisions and they have continued to serve on upgraded posts, such rights cannot subsequently be withdrawn to their detriment. Reliance has also been placed upon the judgments reported as titled Zahid Saleem vs. Secretary Government of Punjab etc. (2023 LHC 4923) and Capital Development Authority through Chairman, Islamabad and others vs. Shabir Hussain and others (2022 SCMR 627), wherein the august Courts has consistently held that in the absence of fraud or misrepresentation on the part of employees, vested rights created through departmental actions cannot arbitrarily be withdrawn at a belated stage.



5. Learned Law Officer has raised objection qua maintainability of instant writ petition in view of bar contained in Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973 (the "Constitution"). Further submits that since posts of the petitioners have already been upgraded/re-designated, hence, they are not eligible for the said relief again on the strength of notification dated 24.11.2011. To fortify his contentions, he has relied upon judgments reported as Nazir Ahmad Panwar vs. Government of Sindh through Chief Secretary, Sindh and others (2005 SCMR 1814), Amanullah Khan vs. Hospital Director, KTH (MTI) Peshawar and others (2023 SCMR 418), Syed Masood Ali vs. Mst. Feroza Begum and another [PLD 2025 (S.C) 339], Tasawar Iqbal and others vs. The Government of Khyber Pakhtunkhwa through Chief Secretary and others [2024 PLC(C.S)1172] and Attaullah Khan vs. Ali Zaman Afridi and others [2023 PLC(C.S) 182].

6. Responding the query, learned counsel for the petitioners, while relying on judgments of Hon'ble Supreme court reported as Secretary to the Government of Pakistan, Establishment Division, Islamabad and another vs. Muhammad Ahmed Khan and others (2025 SCMR 434), Regional Commissioner Income Tax, Northern Region, Islamabad and another vs. Syed Munawar Ali and others (2016 SCMR 859) and Ali Azhar Khan Baloch v. Province of Sindh (2015 SCMR 456) submits that Hon'ble Supreme Court observed that upgradation cannot be construed as promotion but can be granted through a policy therefore issue relating to upgradation of civil servants can be decided by a High Court in exercise of its Constitutional jurisdiction and bar contained under Article 212(3) of the Constitution would not be attracted thus upgradation being not the part of terms and conditions there is no embargo of maintainability of this petition under Article 212 of the Constitution as number of writ petitions involving the question of upgradation have been entertained

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and decided by this Court on merits; that impugned order under challenge having been passed without lawful authority are without jurisdiction and based on mala fide thus liable to be set aside. Further submits that it is the duty of the respondents to consider notification dated 24.11.2011 and redress the petitioners' grievances in the light thereof; that upgradation of the petitioners has been withdrawn without affording any opportunity of hearing to them; that the impugned order has been passed in complete deviation of the principle of *locus poenitentiae* and principle of natural justice in support of his contentions, he has placed reliance on Fida Muhammad vs. Government of Khyber Pakhtunkhwa through Secretary Education, Peshawar and others (2021 SCMR 1895), Muhammad Amjad vs. The Director General, Quetta Development Authority and another (2022 SCMR 797), Mst. Irshad Begum & another vs. Government of Punjab & others [PLJ 2017 Lahore 398 (DB)], Government of the Punjab, Education Department through Secretary Higher Education, Punjab Civil Secretariat Lahore and others vs. Muhammad Imran (2019 SCMR 643), Pakistan through the Secretary, Ministry of Finance vs. Muhammad Himayat Ullah Farukhi (PLD 1969 S.C 407), Pakistan Railways through Chief Executive Officer/Senior General Manager, Lahore and another vs. Muhammad Aslam (2024 SCMR 97), Shams ur Rehman vs. Military Accountant General, Rawalpindi and another (2020 SCMR 188), Mst. Basharat Jehan vs. Director General, Federal Government Education, FGEI (C/O) Rawalpindi and others (2015 SCMR 1418), Jawad Ali and others vs. Superintendent Jail and others [2017 PLC (C.S) 587], Mullana Ihsan ul Hadi vs. Government of Khyber Pakhtunkhwa through Chief Secretary and 4 others [2016 PLC (C.S) 7791], Ashfaq Ahmad and 8 others vs. Federation of Pakistan and 3 others [2017 PLC (C.S) Note 88] and Amanullah Khan's case (supra).

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7. I have heard learned counsel for the petitioners as well as learned Law Officer and perused the record with their able assistance.

8. Firstly, taking up the question of maintainability of this petition raised by the learned Law Officer, the issue of upgradation does not form part of terms and conditions of service of civil servants as held by the Hon'ble Supreme Court in citation Nazir Ahmad Panwar's case (Supra) which is reproduced as under:-

"We are mindful that the upgradation of a post is not a vested right, rather it stems from a policy decision intended to benefit a particular set of employees under the scheme embedded in the policy. Upgradation cannot be mixed up with promotion. In the case of upgradation, the employee continues to hold the same post without any change in his duties, but he is accorded a higher pay scale in order to mitigate the distress associated with stagnation due to a lack of progression or promotional avenues. Once the Government announces a policy, it is also responsible for enforcing such policy across the board to accord the benefit of the policy to all those who are eligible under it and may be benefited because of it. No doubt, the Court cannot interfere in the policymaking domain of the Government, but when a widespread and comprehensive policy is announced to benefit employees, it should be implemented bigheartedly and generously, without adding any ifs and buts or discrimination that can stifle the main objective of the policy.

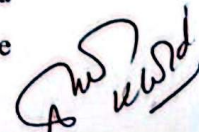
Allah Nawaz Khosa Advocate

Allah Nawaz Khosa

Similarly, in Regional Commissioner Income Tax's case (Supra), term "upgradation" has been elaborated as under:-

"...The expression "upgradation" is distinct, from the expression "Promotion", which is not defined either in the Civil Servants Act or the Rules framed thereunder, and is restricted to the post (office) and not with the person occupying it. The upgradation cannot be made to benefit a particular individual in term of promoting him to a higher post and further providing him with the avenues of lateral appointment or transfer or posting. In order to justify the upgradation, the Government is required to establish that the department needs re-structuring, reform or to meet the exigency of service in the public interest. In the absence of these pre-conditions, upgradation is not permissible.

7. The aforesaid definition of the expression "upgradation" clearly manifests that it cannot be construed as promotion, but can be granted through a policy. In fact, this Court in the judgment titled as Ali Azhar Khan Baloch v. Province of Sindh (2015 SCMR 456) and an unreported judgment of this Court passed in the case of Chief Commissioner Inland Revenue and another v. Muhammad Afzal Khan (Civil Appeal No.992 of 2014) has held that the issue relating to upgradation of civil servants can be decided by a High Court in exercise of its constitutional jurisdiction and bar contained under Article 212(3) of the Constitution would not be attracted. The policy of upgradation, 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 any appeal involving the issue of upgradation, as it does not form part of the terms and conditions of service of the civil servants."

9. Admittedly, the petitioners were given the benefit of notification dated 24.11.2011, however, the same was withdrawn subsequently through impugned order without issuing any notice or providing any opportunity of hearing to the petitioners which is in complete defiance of well-established principle of natural justice. It is settled that no order adversely affecting the right of a party/person could be passed without affording opportunity of hearing. Reliance is placed on *Ali Muhammad vs. The State* (PLD 2010 Supreme Court 623), *Muhammad Zaheer Khan vs. Government of Pakistan through Secretary, Establishment and others* (2010 SCMR 1554), *Muhammad Rafique Chaudhary vs. Muhammad Yaqoob Janjua and 8 others* (2016 CLC 1240) and *Naeem Abbas vs. Government of Punjab through Secretary and 4 others* [2017 PLC (C.S) 404].

10. Another important aspect of the matter is that notification dated 24.11.2011 was implemented by the respondents and petitioners' posts were upgraded/re-designated accordingly meaning that certain rights have been accrued in favour of the petitioners, who never concealed or made any misrepresentation from department. Even there is limitation provided for the disciplinary proceedings. It is well settled that once a right is created in favour of a person by extending benefit of any policy/order or notification for no fault of him, the same cannot be taken away or withdrawn as doctrine of *locus poenitentiae* would come into play.

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11. The jurisdictional limits of an authority to recall its order has been discussed in detail by the Hon'ble Supreme Court in Muhammad Himayatullah Farukhi's case (supra), wherein an order of the President of Pakistan issued in favour of a government servant fixing his basic salary at a certain rate was withdrawn, which was declared to be without lawful authority while observing as follows:-

"The authority that has the power to make an order has also the power to undo it. But this is subject to the exception that where the order has taken legal effect, and in pursuance, thereof certain rights have been created in favour of any individual, such an order cannot be withdrawn or rescinded to the detriment of those rights."

The jurisdictional limits of an authority to withdraw its order/decision has further been refined in Engineer-in-Chief Branch v. Jalaluddin (PLD 1992 SC 207) and while discussing the principle of *locus poenitentiae*, it has been observed as under:

"*Locus poenitentiae* is the power of receding till a decisive step is taken. But it is not a principle of law that orders once passed becomes irrevocable and it is past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of an illegal order... However, as the respondent had received the amount on the bona fide belief, the appellant is not entitled to recover the amount drawn by the respondent during the period when the latter remained in the field... We consider that as far as the recovery of the amount in question is concerned, the principle of *locus poenitentiae* would be applicable and the appellants are not entitled to recover the amount."

12. The impugned order is not based on valid reasons justifying the withdrawal of notification dated 24.11.2011 thus being non-speaking in nature, the same is not tenable as held by the Hon'ble Supreme Court in Messrs United Woolen Mills Ltd. Workers' Union v. Messrs United Woolen Mills Ltd (2010 SCMR 1475), Fasih-ud-Din Khan and others vs. Government of Punjab and others (2010 SCMR 1778).

13. This Court while allowing identical Writ Petition No.11158 of 2022 vide order dated 14.11.2022 set aside the orders of Health Department qua withdrawal of up-gradation/re-designation of employee, thus, the petitioners are entitled to be treated at par with the similarly placed persons in the light of judgment reported as Government of Punjab, through Secretary Education. Civil Secretariat, Lahore and others Vs. Sameena Parveen and others (2009 SCMR 1) on the basis of rule of consistency and equality in view of Article 4 and 10A of the Constitution. Operative part is reproduced herein below:-

"Needless to say that petitioners are entitled to be treated in accordance with law, right to procedural fairness and right to procedural propriety in view of Articles 4 & 10-A of the Constitution of the Islamic Republic of Pakistan, 1973, which has boldly recognized these rights to be immutable rights of every citizen or of any other person for the time being in Pakistan. In this regard, reliance is placed on Ishtiaq Ahmed v. Hon'ble Competent Authority through Registrar, Supreme Court of Pakistan (2016 SCMR 943) Naubahar Ali v. Vice-Chancellor and others [2010 PLC (C.S) 783] and Faisal Sultan v.

E.D.O (Education) and others [2011 PLC (C.S) 419]".

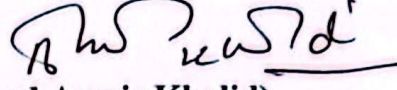
14. In similar circumstances this Court also allowed the petition W.P No.80089 of 2022 vide order dated 16.11.2022 in the following terms:

"2. Petitioner is aggrieved of his retirement in BPS-09. He has referred to the earlier office order dated 07.03.2017 to pay scale BPS-16 by the then Chief Executive Officer, District Health Authority, Okara. The said order was based on the notification issued by the Secretary, Government of Punjab, Health Department, Lahore by which the petitioner was upgraded and re-designated as Chief Technician BPS-16 in Health Care Outreach Technology. While passing the impugned order the earlier office order dated 07.03.2017 was not taken into consideration. There was no warrant for the passing of the impugned order by stating that the petitioner would be deemed retired in BPS-09. The respondents have relied upon a letter by the Directorate General Health Services, Punjab, Lahore dated 20.05.2020 to the Chief Executive Officer, District Health Authority, Okara which states that further upgradation of the petitioner was illegal and against certain notification to which no reference has been made in that letter. However, the fact remains that the petitioner was duly upgraded by an office order issued by the Chief Executive Officer, DHA, Okara and which cannot be withdrawn to the detriment of the petitioner without due process of law and without following the procedural requirements. Be that as it may, pursuant to the letter dated 20.05.2020 which merely made a request to rectify the illegality, nothing more was done by the Chief Executive Officer, DHA, Okara and merely the impugned order was passed on the directions issued by this Court stating that the petitioner would be retired in BPS-09. This could not have been done unless a proper withdrawal of the earlier order was made after due notice to the petitioner and by following due process of law. The impugned order is without lawful authority and is set aside. Petition is allowed. Petitioner will be deemed to have retired in BPS-16 as reflected in the office order dated 07.03.2017 and his pensionary benefits will be worked out accordingly.

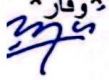
3. Since the circumstances in these petitions are similar to the case decided earlier in which the same issue of law was involved, these petitions too are allowed and the petitioners will be deemed to have retired in their upgraded posts as reflected in the office orders mentioned above and the pensionary benefits will also be worked out accordingly. The impugned notices for recovery of over payment are also quashed."

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15. In view of the above and in order to maintain consistency, instant petition is **allowed** in terms of order dated 16.11.2022 passed in W.P. No.80089 of 2022.



(Malik Muhammad Awais Khalid)
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Allah Nawaz Khoso Advocate