

**JUDGMENT SHEET
IN THE HIGH COURT OF BALOCHISTAN QUETTA.**

Constitution Petition No.1586/2022

(CC-100107504119)

Shujaat Ali Additional Secretary Home & Tribal
Affairs Department & others.

Vs.

Government of Balochistan through
Chief Secretary & others.

Constitution Petition No.1587/2022

(CC-100107504120)

Muhammad Waqar Kakar Assistant Commissioner
Kuchlak & others.

Vs.

Government of Balochistan through
Chief Secretary & others.

Dates of hearing 21.03.2023, 04.04.2023, 17.04.2023, 11.09.2023,
18.10.2023, 20.10.2023, 24.10.2023 and 30.10.2023.

Announced in open Court on 03.11.2023

In CP Nos.1586 and 1587 of 2022:

Petitioners by: M/s Muhammad Shoaib Shaheen, Ghulam
Mustafa Buzdar, Mubashir Ababaki, Shoaib
Mengal Iqbal Ahmed Satazkai, Andleeb Qaisrani
and Saeed Ahmed Achakzai Advocates.

Respondent
Nos.1 and 2 by: M/s Muhammad Asif Reki Advocate General &
Mr. Zahoor Ahmed Baloch Additional Advocate
General.

Respondent Nos.4, 5
16, 17, 22, 24, 25, 29, 32, 36, 38,
39, 42, 49, 51, 52, 61, 63 and 70 by: Khawaja Haris Ahmed Advocate.

Respondent Nos.
6, 11 and 44 by: Syed Ayaz Zahoor and Aster Mehak Advocates.

Respondent Nos.20
and 57: In person.

Respondent Nos.13, 27,
28 and 66 by: M/s Qasim Ali Gajezi and Shay Haq Akhtar
Advocates.

Respondent
Nos.74 and 75 by: M/s Munir Ahmed Khan Kakar and Aminullah
Gharsheen Advocates.

Respondent Nos.9
and 69 by:

M/s Naseebullah Tareen, Izahar ul Haq Tareen,
and Jahandad Shah Kakar Advocates.

Respondent Nos.3, 8, 19, 26,
33, 45, 46, 47, 55, 60 and 62 by: Mr. Amanullah Kanrani, Advocate.

JUDGMENT

Naeem Akhtar Afghan, CJ. - This common judgment disposes of Constitution Petition Nos.1586 & 1587 of 2022 as identical questions of facts and law are involved in both the petitions.

2. Relevant facts of the case are that in March 2001, a working paper with proposals for creation of four (04) managerial groups on the pattern of Balochistan Civil Service (Executive Branch) (hereinafter referred as “BCS”) and Balochistan Secretariat Service (Secretariat Branch) (hereinafter referred as “BSS”) as Administrative arrangements for improving efficiency/governance was prepared for consideration of the Provincial Cabinet by Mr. Ahmed Bakhsh Lehri the then Additional Chief Secretary Planning & Development Government of Balochistan (GoB) which reads as follows:

“It has been observed that because of in-sufficient managerial capacity in some departments desired results are not coming-up. The Health and Education Departments are the main sufferers. In these departments the managerial position are filled from professional cadres (teachers and doctors). In this system the following draw-backs emerged:

- a) *Every teacher/doctor wants to become DEO/DHO etc. In this process if they are selected on merit the sector /field is deprived of competent professionals. If 2nd line professionals are assigned these duties then it will be a dis-incentive, discouragement for the competent professionals. In both the cases the professionals (without managerial skills/training) performing managerial duties are manipulated by their lower staff, resultantly the efficiency of department is reduced and projects suffer. Invariably projects fail to achieve their targets. Numerous examples could be quoted.*

- b) *The majority of the line departments have planning wings at their administrative and attached department level. These planning positions are filled-in-from professional cadres. There cadres have yet to develop a suitable career development plan absence of which proves a discentive. Planning is a technical field and persons without appropriate motivation training and experience are posted on these position which creates hurdles in achieving the desired results.*
- c) *The financial management in Balochistan has been suffering enormously because we don't have professional financial experts. These position are either filled-in on transfer from administrative/secretariat position or these are filled-in from transfers from A.G's office. In former case the management becomes defective while in later case the officials having no interest and accountability from provincial government indulge in mal-practices etc.*

A review of previous Aid Memoirs and the observations of Foreign Donors indicates that in case of first category, negligence and in-competence is reported, while in cases of second category there is a problem of mis-appropriation/embezzlement and manipulation of procedures. The financial managers escape while the administrator/project directors face the problem.

In view of these short comings it will be a high time for us to separate the professional positions from the managerial positions so that everybody remains in their cadre/line of service. A teacher or a doctor should function as such rather than making efforts for getting managerial position like SDEO, DEO/DHO or Director etc.

It is therefore, proposed that we may establish the following managerial groups on pattern of Balochistan Civil Service (Executive Branch) and Balochistan Civil Service (Secretariat Branch).

“1). Balochistan Civil Service (Education Branch).

This group be selected as a result of a competitive examination. A person so qualified should undergo a routine BCS training followed by professional training in Provincial Institute of Teachers Education and on completion of training they may be appointed in B-17 as SDEO, B-18 as DEO, B-19 a Divisional Director and in B-20 as Director Primary, Secondary, Colleges and Bureau of Curriculum etc. After serving atleast three years in B-20 the incumbents be declared as members of Balochistan Civil Service (Unified Group) and in that case if necessary they may move on to other positions.

2) Balochistan Civil Service (Health Branch).

Exactly on the above pattern, the officers of health department be selected through a competitive examination.

On qualifying they may under-take routine civil service training professional training in health affairs and appointed in B-17.

On promotion to B-18 they may be appointed as District Health Officer/Deputy Director; in B-19 Additional Director etc. and in B-20 D.G Health Services etc. Again after serving three years they may become part of Balochistan Civil Service (Unified Group).

In both cases the 4 tier formula will remain intact to facilitate and encourage the professionals in their own field.

3). Balochistan Civil Service (Planners and Economist Branch).

Officers in this cadre will mainly be functioning in Planning and Development Department or as director development. The planning positions in line departments may also be filled-in from this cadre. It will enhance the capacity of planners. They gain practical training in planning and development department while getting experience in the line departments. In this system, the persons, selected be appointed as Planning Officer/Research Officer (B-17) and on promotion to B-18 they may become Assistant Chiefs and B-19 Chief of Section and in B-20 Chief Economist/Joint Chief Economist etc. In this case the officers in B-20 after serving three years may become a member of Balochistan Civil Service (Unified Group).

4) Balochistan Civil Service (Finance and Accounts Branch).

The initial cadre for these positions will be that of Treasury Officers/Accounts Officers in line departments and also (a portion of) Section Officers Finance Department and Excise and Taxation Officers. On selection through a Competitive Examination these officers may undergo a training in Civil Services Academy in Peshawar and Professional Training in Accounts, Finance/Taxation in any professional financial training institute. On promotion in B-18 these officers may be adjusted on the position of Deputy Secretary in Finance and Excise Departments/Deputy Director etc. in line departments and project positions. In B-19 these officers may be entitled for posting as Additional Secretary in Finance Department and Directorial position in line departments/projects. In B-20 they may get Senior Directorate position including Director Excise and Taxation etc. Serving for three years in this cadre and grade will make them eligible for induction in Balochistan Civil Service (Unified Group).

In all these four cases the officers shall be adjusted against existing sanctioned strength (already held by these officials). The sanctioned strength and promotion opportunity

for Executive and Secretariat branch shall remain intact however in B-20 after becoming number of Balochistan Civil Service (Unified Group) these persons may (if so required) become eligible for transfers on other position. On transfer these officers will continue to hold lien against their original posts. The eligibility for promotion will only be against clear vacancies, resulting in case of retirement, death and termination of service by the person holding that position in that grade.

The quota of BCS (Executive/Secretariat), APUG Officers and promotee in all the relevant departments shall remain intact”.

3. Due to the exercise of establishment of District Governments (i.e. Offices of Zila Nazims and Naib Nazims) at that time, the then Chief Secretary GoB made the following observations to the above proposals:

“a). In the draft law being considered for the establishment of district governments there is an express provision that these governments will be set up using the available human resources during the transition period (Section 177 of the draft ordinance). No new inductions for the purpose are to be made either at the district or provincial level.

b). The establishment of district governments is going to have implications for various services and significant readjustments will be required. It will be appropriate if such decisions are postponed till the new set up crystallizes and the requirements of the new system become clear. At that stage if there is a requirement for new inductions the case may be taken up again.”

4. With the approval of the then Governor Balochistan, the above working paper alongwith the observations of the then Chief Secretary GoB were placed in the meeting of the Provincial Cabinet dated 21st/22nd March 2001.

S&GAD raised objection on submitting the above proposals to the Provincial Cabinet without involving Services & General Administration Department (**‘S&GAD’**) and non-obtaining of the

viewpoints of Health, Education and Finance Departments before submission of the proposals to the Provincial Cabinet.

5. The Provincial Cabinet approved the above proposals in principle with the desire that S&GAD GoB will work out the details to implement the proposals for introducing 25 posts for each mentioned category.

6. The above Proposals were thoroughly examined by S&GAD and it was brought out that instead of 04 Service Groups, it would be expedient to introduce one Service Group under the name of "*Planning and Finance Group*" which will be manageable to meet the requirement of professional managers to cater the needs of Health, Education, Planning & Finance Departments as well as other Departments.

7. In the subsequent meeting of the Provincial Cabinet held on 30.06.2001, the Provincial Cabinet discussed the implications and modalities of creating 04 Service Groups, as already approved by it in principle, or creating one group, as proposed by S&GAD.

After long discussion, the Provincial Cabinet concluded that 02 Service Groups of professional managers will be created in the Provincial Service as under:

1. Planning & Economist Group
2. Finance & Accounts Group

8. The Provincial Cabinet further decided to induct 50 fresh officers (B-17) in each group through competitive examination to be conducted by the Balochistan Public Service Commission ('BPSC') on the pattern of BCS and BSS Examination for which it was decided to

immediately send a reference to BPSC. It was further decided that after a common training at the Provincial Civil Service Academy, each group will be sent to various institutions for professional/specialized training in the field of Planning & Development and Finance & Account respectively. It was also decided that in the meanwhile S&GAD will frame Service Rules and other details of both the Service Groups separately.

9. In view of the above decision of the Provincial Cabinet, *Balochistan Finance & Accounts Group Service Rules 2001* and *Balochistan Planning & Economist Group Service Rules 2001* were framed/notified on 04.08.2001 which so far have not been repealed.

10. S&GAD GoB issued order dated 04.08.2001 whereby the GoB accorded sanction for creation of the following posts with effect from 01.07.2001 with stipulation that the expenditure involved will be charged under the heads 6-02100-Finance Department, 6-03200 Planning & Development Department:

1. 50 posts of B-17 Planning and Economist Group
2. 50 posts of B-17 Finance and Accounts Group

The above posts were designated as Assistant Executive Officers ('AEOs') (Planning & Economist) (B-17) and AEOs (Finance & Accounts) (B-17).

11. Advertisement dated 29.08.2001 was made by the BPSC inviting applications from the candidates for the posts of AEOs (Planning & Economics) and (Finance & Accounts).

12. After conducting competitive examination, BPSC issued Notification dated 11.05.2002 declaring 157 candidates having

qualified the competitive examination for the posts of AEOs (Planning & Economics) and AEOs (Finance & Accounts).

After conducting interviews of the qualified candidates, BPSC issued Notification dated 02.07.2002 recommending 47 candidates for appointment as AEOs (Finance & Accounts) and 47 candidates for appointment as AEOs (Planning & Economics) in S&GAD GoB.

13. On the basis of above recommendations, S&GAD GoB issued offer letters dated 15.08.2002 to the recommended candidates for their appointment as AEOs (Finance & Accounts) and AEOs (Planning & Economics) in Finance Department and Planning & Development Department by specifying the terms and conditions. The terms and conditions (i) & (ii) being relevant are reproduced herein below:

- i) *The terms and conditions of your appointment to the service will be regulated by the Balochistan Finance and Accounts Group and Planning and Economics Group Service Rules, 2001.*
- ii) *Your pay will be regulated in accordance with the Finance Department's letter No.FD (R) III-62 /94/1750-1885 dated 31.08.21994. You will be governed by such rules and orders relating to leave, T.A. Medical Attendance etc; as may be issued by the Government from time to time for the category of Government servant to which you will belong;*

14. On acceptance of the offer by the recommended candidates, vide Notification dated 21.10.2002 S&GAD/GoB appointed 48 candidates as AEOs (Finance & Accounts) in the Finance Department GoB and vide another Notification dated 21.10.2002 S&GAD appointed 46 recommended candidates as AEOs (Planning & Economics) in the Planning & Development Department GoB.

15. In March 2003, Finance Department GoB raised objection that the qualification prescribed for the posts of Finance & Accounts Officers does not commensurate with the job being assigned to AEOs and their intended training will not enhance their capacity to the level of those who are S.A.S Masters Degree in Economics. It was also observed that AEOs having no proper Service Rules have no prospect of further promotion. Finance Department was of the view that both groups be merged, proper Service Rules be framed and the AEOs be placed at the disposal of S&GAD on the pattern of BCS and BSS Officers.

16. With prior approval of the competent authority, S&GAD GoB notified the following policy vide Notification dated 30.09.2003:

- “i) Postings/Transfers of Assistant Executive Officers Planning & Economist Group and Finance & Accounts Group will be governed by S&GAD.*
- ii) According to Rule 10 of the Balochistan Finance and Accounts Group Service Rules, 2001 and Balochistan Planning & Economist Group Service Rules, 2001 AEOs may be transferred from one Group to other Group viz, Finance & Account and Planning and Economist Groups”.*

17. It transpires that vide Notification dated 20.03.2004, Secretary S&GAD posted 14 AEOs of Finance & Accounts Group in S&GAD, Home Department, Social Welfare Department, C&W Department, Agriculture and Food Department, Fisheries Department, Education Department, Finance Department, Information Department, Irrigation & Power Department, Planning & Development Department, Industries Department, Forest & Livestock Department and Health Department and posted 11 AEOs of Planning & Economics Group in

Health Department, Agriculture & Food Department, Education Department, C&W Department, Irrigation & Power Department, Planning & Development Department, Local Government Department, Industries Department, Mines & Minerals Department, Forest & Livestock Department and Finance Department.

Para-2 of the above Notification dated 20.03.2004 issued by Secretary S&GAD GoB, being relevant, reads as follows:

2. *These Assistant Executive Officers on their posting in various Secretariat Departments as shown above would:*
 - a) *continue to draw their salary from S&GA Department.*
 - b) *be designated as Assistant Executive Officer and would be treated at par with Section Officer.*
 - c) *be Incharge of an independent Section in discharging their duties assigned/entrusted by the Secretary concerned.*
 - d) *be provided with supporting staff which is required to run a section from available strength”.*

18. Similarly, vide another Notification dated 20.03.2004 issued by S&GAD GoB, 26 AEOs of Finance & Accounts Group and 27 AEOs of Planning & Economics Group were ordered to be posted in different districts of Balochistan.

19. Vide letter dated 07.05.2005, BPSC provided the combined list of inter se seniority of AEOs of the Finance & Accounts Group and Planning & Economics Groups in the order of merit with reference to letter dated 07.05.2005 of S&GAD GoB.

20. Two separate Final Seniority Lists of AEOs (Finance & Accounts) Group and AEOs of (Planning & Economics) Group as

stood on 01.03.2005 were issued by S&GAD GoB vide two separate Notifications dated 04.05.2007.

21. The adjustment and concerns of AEOs remained issue due to which a Committee was constituted on 18.01.2005 to be chaired by Secretary S&GAD with Secretary Finance GoB, Secretary P&D Departments GoB and representative of the Board of Revenue as Members to propose recommendations for adjustment and redressal of grievance of AEOs.

22. After deliberations, the AEOs of Planning & Economics as well as Finance & Accounts Groups were inducted in BCS Group with immediate effect by relaxing all the Rules and Regulations vide Notification dated 07.05.2005 issued by Secretary S&GAD GoB but the said Notification was held in abeyance till further orders by Secretary S&GAD GoB vide subsequent Notification dated 11.05.2005 against which a representation was preferred by AEOs, on the basis whereof, Summary dated 24.05.2005 was initiated for approval of the then Chief Minister Balochistan for adjustment of AEOs.

23. Vide Notification dated 21.11.2005, S&GAD GoB amended the Balochistan Planning & Economics Group Service Rules 2001 by adding the following appendix:

2.	<i>Executive Officer (Planning and Economics) (B-18)</i>	-	<i>By promotion from amongst the Assistant Executive Officer (Planning and Economics) (B-17) on seniority-cum-fitness with five years service as such provided he has cleared the departmental examination.</i>
3.	<i>Director (Planning and Economics) (B-19)</i>	-	<i>By promotion from amongst holder of the post of Executive Officer (Planning and Economics) on seniority-cum-fitness with at least seven years service as such.</i>

Similarly, vide another Notification dated 21.11.2005, S&GAD GoB amended the Balochistan Finance & Accounts Group Service Rules 2001 by adding the following appendix:

2.	<i>Executive Officer (Finance and Accounts) (B-18)</i>	-	<i>By promotion from amongst the Assistant Executive Officer (Finance and Accounts) (B-17) on seniority-cum-fitness with five years service as such provided he has cleared the departmental examination.</i>
3.	<i>Director (Finance and Accounts) (B-19)</i>	-	<i>By promotion from amongst holder of the post of Executive Officer (Finance and Accounts) on seniority-cum-fitness with at least seven years service as such.</i>

It reveals that the AEOs were not promoted as Executive Officers (B-18) and Directors (B-19) due to non-availability of those posts and from year 2004 to year 2008, the AEOs of both the groups remained posted on different posts in different Departments of GoB in different Districts.

24. From year 2002 to 2008, the above 50 posts of B-17 Planning and Economist Group remained reflected as “*Finance and Planning Officer*” in Planning & Development Department GoB under the head 6-03200 and the above 50 posts of B-17 Finance and Accounts Group remained reflected as “*Finance & Planning Officer*” in the Finance Department GoB under the head 6-02100.

25. Record reveals of working paper dated 15.03.2008 prepared by the then Chief Secretary GoB in para-4 whereof it was proposed to re-designate 30 posts of AEOs (B-17) as Deputy District Officers (Planning) under the direct control of District Officer (P&F), 30 posts of AEOs (B-17) as Deputy District Officers (Finance) under the direct control of District Officer (P&F), 30 posts of District

Administrative Officers (B-18) as Deputy District Coordination Officers (B-18) and 77 posts of Assistant District Administrative Officers (B-17) as Assistant Coordination Officers-cum-Price Control Magistrate (B-17) at Tehsil levels also being Incharge of Revenue Administration at Tehsil level.

Para Nos.7 to 10 of the above working paper read as follows:

“7. The BCS (EB) Association has given in written No Objection for their absorption in the BCS Cadre, against quota reserved for initial recruitment.

8. It is mentioned that under the provisions of Rule-9 of the (Appointment, Promotion and Transfer) Rules, 1979, “appointment by transfer shall be made from amongst the persons holding appointment on regular basis in the same grade in which the post to be filled in exists”.

9. Keeping in view the above, it is proposed that 50% posts falling under direct quota is filled in through transfer/absorption as per rules quoted above in accordance with seniority through the Provincial Selection Board as provided under Rule-7 of the ibid rules as per available vacancies and the remaining AEOs will be absorbed through the prescribed channel as and when the vacancies become available under the direct quota. After their absorption BCS/BS-17 Executive Branch they will be sent on six months pre-service training at PPSA, Peshawar. This absorption would be against direct quota and no one is going to be affected through this procedure rather it would be in the public interest to have the experienced/trained officers in the cadre.

10. In order to address apprehensions of Tehsildars for losing their seniority, the promotions acquired by them during same calendar year, may be provided edge on seniority over AEOs. It will be done through the Provincial Selection Board in the prescribed manner. And the Notification dated 7th March, 2008 will be amended accordingly in the categories mentioned in the column of ADAOs and DAOs”.

26. It is pertinent to mention here that vide letter dated 17.02.2008, President BCS Officers Association and General Secretary

BCS Officers Association had already expressed their consent in writing to Chief Secretary GoB for merger of AEOs to BCS cadre.

Similarly vide letter dated 29.03.2008 Mr. Muhammad Siddiq Sherani General Secretary Balochistan Secretariat Officers Welfare Association had also made proposals to Secretary S&GAD GoB for absorption of AEOs in BCS and BSS Groups.

27. In pursuance of approval of Summary dated 01.04.2008 by the then Chief Minister Balochistan, sanction was accorded by Finance Department GoB vide letter dated 01.04.2008 for re-designation of the posts of AEOs as follows in financial year 2007-2008:

<i>S.No.</i>	<i>From</i>	<i>Number of posts</i>	<i>To</i>
1.	<i>Assistant Executive Officer (B-17)</i>	30	<i>Deputy District Officer (Planning) (BS-17) in each District</i>
2.	<i>Assistant Executive Officer (B-17)</i>	30	<i>Deputy District Officer (Finance) (B-17) in each District</i>
3.	<i>Assistant Executive Officer (B-17)</i>	40	<i>Section Officer (B-17) in Balochistan Civil Secretariat.</i>

In pursuance of above sanction by Finance Department, S&GAD accordingly issued order dated 01.04.2008 for re-designation of the above posts in financial year 2007-2008.

28. In pursuance of above re-designation, 40 posts of Section Officers were given at the strength of BSS in 25 Departments of Secretariat with stipulation that the expenditure involved will be debit able to the head of account "BC 21001 QA 4015 S&GAD" during financial year 2007-2008.

29. The minutes of the meeting of the Provincial Selection Board dated 02.04.2008 reveal that 45 AEOs were recommended to be absorbed against BCS (B-17) posts and 30 AEOs were recommended to be absorbed in BSS (B-17) posts.

30. In pursuance of all the above and in pursuance of Rule 9 of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules 1979 and on the recommendation of the Balochistan Provincial Selection Board, Notification dated 03.04.2008 was accordingly issued by S&GAD GoB for absorption of 45 AEOs on BCS (B-17) posts against direct quota with immediate effect and for absorption of 30 AEOs against BSS (B-17) Section Officers posts against direct quota with immediate effect with stipulation that they shall be placed at the bottom of the seniority list of the respective groups and shall not claim seniority over the existing incumbents.

31. After their absorption in BCS and BSS Groups in the year 2008, 43 AEOs qualified the requisite promotion examination from BPSC and they were promoted to BPS-18 as BCS officers having been absorbed in BCS Group.

32. Subsequently, consequent to Enactment of Balochistan Local Government Act, 2010, with prior approval of the competent authority, vide order dated 18.10.2010 GoB abolished 30 posts of Executive District Officer (Revenue) (B-19), 30 posts of Deputy District Officer (Planning) (B-17) and 30 posts of Deputy District Officer (Finance) (B-17) during the financial year 2010-2011.

33. In pursuance of judgments passed by Supreme Court of Pakistan in the case of Contempt proceedings against Chief Secretary, Sindh and others, 2013 SCMR 1752, in the case of Ali Azhar Khan Baloch v. Province of Sindh, 2015 SCMR 456 and in compliance of order dated 15.11.2016 passed by Supreme Court of Pakistan in Criminal Original petition No.183 of 2016 titled as “*Muhammad Tariq Javed Mengal and others v. GoB*”, with prior approval of the competent authority, vide Notification dated 15.12.2016, the absorption Notification dated 03.04.2008 of AEOs was withdrawn and in consequence of same, all the AEOs who were absorbed in BCS and BSS Groups of the Provincial Civil Service were directed to report to S&GAD for further orders.

34. Record reveals that after their absorption vide Notification dated 03.04.2008 in BCS and BSS Groups and till withdrawal of their absorption vide Notification dated 15.12.2016, the AEOs remained posted in different Departments/in different Districts on different posts in BPS-17 as well as BPS-18 as BCS and BSS Officers. Some of them were also assigned acting charge of BPS-19 and the seniority lists of BCS and BSS Officers were also issued in different years by S&GAD which also included the names of the absorbed AEOs.

35. The Notification dated 15.12.2016 was challenged by AEOs of Finance & Accounts Group and Planning and Economics Group by filing CP Nos.1163 & 1172 of 2016 before this Court which were held not maintainable in view of order dated 10.05.2016 passed by Supreme Court of Pakistan in the case of “*Muzzaffar Hussain v.*

Federation of Pakistan (Criminal Original Petition No.31 of 2016)” and same were dismissed by this Court vide common order dated 14.03.2017 without touching merits of the case.

36. The common order dated 14.03.2017 passed by this Court in CP Nos.1163 & 1172 of 2016 was challenged by AEOs before Supreme Court of Pakistan by filing Civil Appeals but same were dismissed on merits vide common judgment dated 25.09.2017 with the following observations:

“Perusal of the rules reproduced above and the appendix added thereto shows how the officers in the Balochistan Civil Service Executive Branch and Balochistan Secretariat (Section Officers) Service are appointed, how long they stay on probation, how are they promoted, what are the conditions therefor, what is the percentage of the vacancies to be filled by initial recruitment or by promotion from amongst the members of the service holding posts in lower scales and what are the requisites therefor. Any other mode of appointment is alien to the rules and so is absorption of a civil servant of a non-cadre post against a cadre post. This aspect was highlighted by the Chief Secretary of the Province in the summary proposing the absorption of Assistant Executive Officers of Finance and Account and Planning and Economics groups. But the caretaker Chief Minister without realizing that he had no power and competence under the Balochistan Civil Servants Act 1974 and the rules made thereunder proceeded to approve the summary absorbing the Assistant Executive Officers of both the groups in Balochistan Civil Service (Executive Group) and Balochistan Secretariat (Section Officers) Services. Such absorption is sought to be protected by invoking section 11A of the Balochistan Civil Servants Act but the application of this provision could only be invoked where a civil servant is rendered surplus as a result of reorganization or abolition of a department, office or a post in pursuance of any decision of the government. In this case the rules regulating appointment by initial recruitment, promotion and transfer in the Balochistan Civil Service (Executive Branch) and the Balochistan Secretariat (Section Officers) Service are still intact as no amendment has been made to squeeze in any intruder; therefore, individual or en-bloc absorption from any other group of service, being essentially against law, cannot be upheld”.

37. It reveals that after the above judgment, a working paper was prepared on 23.10.2017 by the then Minister S&GAD for placing the same before the Provincial Cabinet with prior approval of the then Chief Minister Balochistan for arriving at a decision on the following points:

- *Creation of OSD posts in B-18 in S&GAD and release of salaries there against; and*
- *Proposal of restructuring and re-organization of 3rd cadre under the administrative control of S&GAD.*

38. The minutes of the meeting of the Provincial Cabinet dated 24.10.2017 with its decision with regard to ex-agenda item No.2 (Administrative reorganization of Service Groups of Assistant Executive Officers) reads as follows:

“Some members of the Provincial Cabinet pointed out the issue of administrative re-organization of service group of Assistant Executive Officers in the scenario of post Supreme Court decision, and requested the forum for creation of third cadre for the above mentioned officers in Provincial Civil Services under the administrative control of the Services & General Administration Department, for which a committee has already been constituted and in the meanwhile required number of the posts of OSD in BPS-18 are required to be created in S&GAD. The Chief Secretary Balochistan informed the Provincial Cabinet about the impact and fear of contempt of court in case of creation of any other cadre, as the other service groups would definitely oppose the proposal. It was also pointed out that the said officers have not received any salaries since March 2017.

Decision:

After discussion, the Provincial Cabinet decided that Chief Secretary Balochistan would look into the matter in the light of relevant rules and ensure payment of salaries to the Assistant Executive Officers, for their long overdue salaries. Additionally, long term solution to the issue would be determined and submitted to the competent forum for finalization.

The meeting ended with a vote of thanks to and from the Chair”.

39. It is pertinent to mention/observe here that in the above meeting dated 24.10.2017 the Provincial Cabinet did not approve for ab-initio abolition of the posts of AEOs.

40. On 25.11.2017 a Summary was forwarded to the then Chief Minister Balochistan for creation of OSD posts for AEOs for drawl of their salaries which was approved and in this regard authentication was solicited from Finance Department by S&GAD.

41. After authentication by the Finance Department, S&GAD issued Notification dated 30.11.2017 whereby 71 posts of OSD BPS-17 were created for drawl of salaries of AEOs w.e.f. 27.03.2017.

42. Subsequently vide Notification dated 18.12.2017, the Finance Department GoB accorded sanction for ab-initio abolition of 33 posts of AEOs (BPS-17) (Planning & Economics) in Planning & Development Department and 37 posts of AEOs (Finance & Accounts) in Finance Department during the financial year 2017-18.

43. In supersession of Notification dated 30.11.2017 S&GAD issued another Notification dated 12.02.2018 whereby 71 posts of OSD (BPS-18) in S&GAD were created for drawl of salaries of AEOs w.e.f. 27.03.2017.

44. Against the common judgment dated 25.09.2017 passed by Supreme Court of Pakistan, the AEOS filed CMA No.9819 of 2017 in C.A No.588 of 2017 which was disposed of by the Supreme Court vide order dated 13.12.2019 by providing an opportunity to learned counsel for the AEOs to reformulate his points in a properly framed review petition subject to its maintainability.

45. In pursuance of above order, Civil Review Petition Nos.94 & 95 of 2020 were filed by AEOs in Supreme Court of Pakistan.

During pendency of above Review Petitions, CMA No.1199 of 2020 was filed by Khawaja Haris Ahmed Advocate Supreme Court for permitting him to argue the Review Petitions instead of Mr. Waseem Sajjad Advocate who had previously argued the matter before the Supreme Court of Pakistan on behalf of some AEOs.

46. Civil Review Petition Nos.94 & 95 of 2020 with CMA No.1199 of 2020 were disposed of by the Supreme Court vide common order dated 29.03.2022 in the following terms:

“For the reasons disclosed in the application bearing No.1199/2020, the same is allowed. The office is directed to register and number the review petition.

2. It is admitted by all present that the petitioners before us are not being given any permanent posting since last about six years and have, in fact, been working as OSDs in different departments from time to time, and further that they have been inducted through proper examination and tests conducted by the Public Service Commission. In the circumstances, it is imperative for the Government to decide the future of these officers which is dangling since the year 2017, such be done keeping in view their academic qualification and experience and also the relevant provisions of the Constitution and law, particularly section 11-A of the Balochistan Civil Servants Act, 1974, and frame a policy with an open mind so that they may be adjusted accordingly. Such be done within a period of three months from today and a report be submitted to the Registrar of this Court for our perusal in chambers. The petitions stand disposed of in the foregoing terms”.

47. In pursuance of above order passed by the Supreme Court of Pakistan, after deliberation and discussion in its meeting dated 08.09.2022, the Balochistan Provincial Cabinet decided as follows:

“The Provincial Cabinet observed that the AEOs were recruited through Balochistan Public

Service Commission on the basis of same syllabus and examination meant for BCS/BSS and were later merged/absorbed in the BCS/BSS along with posts having relevant experience and qualification as a result of re-organization, on the recommendations of Provincial Selection Board and with consent of both the Service Groups through their Associations. Keeping in view the order of the Honourable Supreme Court of Pakistan dated 29.03.2022 and to better utilize the services of AEOs, the Provincial Cabinet after detailed discussion, unanimously decided to restore merger of the Assistant Executive Officers (AEOs) in BCS/BSS as per Section 11-A of the Balochistan Civil Servants Act, 1974 instead of Rule 9 of the erstwhile Balochistan Civil Servants (Appointment, Promotion and Transfer), Rules, 1979”.

48. In compliance of above decision of the Balochistan Provincial Cabinet, S&GAD GoB and Chief Secretary GoB issued the Notification dated 01.10.2022 in favour of AEOs which reads as follows:

“In pursuance of order dated 29.03.2022 passed by the Honorable Supreme Court of Pakistan in review petition 94 and 95/2020, and consequently decision of the Provincial Cabinet dated 8th September, 2022 vide Agenda item No.1, the Government of Balochistan is pleased to restore the merger of Assistant Executive Officers in Balochistan Civil Service and Balochistan Secretariat Service under section 11-A of the Balochistan Civil Servant Act 1974, instead of rule 9 of the erstwhile Balochistan Civil Servant (Appointment, Promotion & Transfer) 1979 Rules”.

This notification is issued with the approval of the Chief Minister Balochistan”.

49. The above Notification dated 01.10.2022 has been impugned by BCS and BSS Officers in the instant Constitution Petitions claiming the following relief:

“In view of the above narrated facts and circumstances enumerated in the preceding paragraphs, the Hon’ble Court may graciously be pleased to declare the following in the interest of justice, equity and fair play:

1. *Declare that the impugned Notification dated 01-10-2022 of merger of AEOs, issued by the respondent No.01 as illegal, unlawful and ultra vires to the Constitution, therefore the same may be set aside/struck down.*
2. *Declare that the restoration of absorption/merger of AEOs in BCS and BSS vide impugned Notification dated 01-10-2022 with retrospective effect is not only violation of Constitutional provisions but also contrary to judgments/order of Hon'ble Supreme Court as well as Hon'ble High Court of Balochistan.*
3. *It may kindly be declared that Executive Authorities cannot nullify the impact of judgments of Hon'ble Supreme Courts of Pakistan generally and specifically in case of Assistant Executive Officers (AEOs) as tendered in Review Judgment dated 25.09.2017 passed in CMA 588 to 590/2017.*
4. *The respondents No.1 and 2 may kindly be declared (sic) to implement/Execute the judgments/orders of Hon'ble Supreme Court in true letter and spirit.*
5. *Grant any other relief to which the petitioners found entitled under the Constitution and which is deemed just and proper from the Hon'ble High Court in the facts and circumstances of the case”.*

50. Chief Secretary GoB (arrayed as respondent No.1 in both the petitions) and Secretary S&GAD GoB (arrayed as respondent No.2 in both the petitions) have contested both the Petitions by filing joint parawise comments in CP Nos.1586 of 2022 which have been relied upon in CP No.1587 of 2022.

51. In CP No.1586 of 2022 respondent No.44 (Muhammad Zaman AEO) has filed parawise comments and has placed on record all the relevant documents with CMA No.674 of 2023 which have also been relied upon by him in connected CP No.1587 of 2022.

All the remaining AEOs have relied upon the reply of respondent No.44 in both the petitions as well as on the documents filed by him through CMA No.674 of 2023.

52. Mr. Zamran Ali Chief of Section Planning & Development Department GoB and Mr. Rafiullah Khan Sub Accountant/District Account Officer Pishin (arrayed as respondent Nos.74 & 75 respectively in both the petitions) have contested both the petitions by filing joint reply.

53. In CP No.1586 of 2022, Secretary Finance GoB (arrayed as respondent No.72) has prayed to be excluded from the array of respondents having unnecessarily been joined as party.

54. After hearing learned counsel for the parties as well as learned AAG at length on different dates, we have perused the entire record with the able assistance of learned counsel for the parties, learned AG, AAG, petitioner No.1 (in CP No.1586 of 2022), respondent Nos.20 and 44.

Section 11-A of the Balochistan Civil Servants Act, 1974 (hereinafter "**the Act of 1974**"), being relevant for decision of both the petitions, is reproduced herein 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.]

55. Being relevant for decision of both the petitions, the Definition of “Absorption” and “Merger” as contained in the Black’s Law Dictionary, Ninth Edition, by *Bryan A Garner* Editor-in-Chief, is reproduced herein below:

Absorption: *“The act or process of including or incorporating a thing into something else”.*

Merger: *“The act or an instance of combining or uniting”.*

The above meanings reveal that both the words i.e. “Absorption and “Merger” are synonyms. The word “Merger” is alien to section 11-A of the Act of 1974 and the word “Absorption” has been used in section 11-A of the Act of 1974.

56. While unanimously deciding to restore merger of AEOs in BCS and BSS Groups under section 11-A of the Act of 1974 in its meeting dated 08.09.2022, the Provincial Cabinet altogether ignored that in its meetings dated 24.10.2017 as well as 08.09.2022 it did not decide to abolish the posts of AEOs which was a prerequisite to attract section 11-A of the Act of 1974.

57. While issuing the impugned Notification dated 01.10.2022 to restore the merger of AEOs in BCS and BSS Groups under section 11-A of the Act of 1974, respondent Nos.1 & 2 have also failed to

appreciate that there was no decision of the GoB for abolition of the posts of AEOs to attract section 11-A of the Act of 1974.

58. The Notification dated 18.12.2017 issued by the Finance Department GoB according sanction for ab-initio abolition of the posts of AEOs has no legal value and same cannot be made a basis to issue the impugned Notification dated 01.10.2022 to restore the merger of AEOs in BCS and BSS Groups under section 11-A of the Act of 1974 as the decision for abolition of the posts of AEOs has to be taken by GoB and according to the dictum laid down by the Supreme Court of Pakistan in the case of Mustafa Impex v. Government of Pakistan, PLD 2016 Supreme Court 808, GoB means “*the Chief Minister and the Provincial Cabinet*” and it does not mean “*the Finance Department*”.

59. It is relevant to mention here that the “*Balochistan Integrated Area Development Project*” (BIAD) was abolished and its staff was placed in the surplus pool already available in S&GAD in pursuance of decision of the Provincial Cabinet dated 30.12.1997 and in view of the decision of the Provincial Cabinet, Notification for abolishing BIAD was issued, its staff was directed to report to surplus pool of S&GAD, the Finance Department was directed to arrange necessary funds for surplus pool for paying salaries to the surplus staff of BIAD till further order and Public Health Engineering (‘PHE’) Department was directed to submit a proposal for consideration by the Provincial Cabinet for transfer of assets of BIAD to Planning & Development Department.

But in the instant case, there is no decision of the Provincial Cabinet to abolish the posts of AEOs.

60. While deciding to restore merger of AEOs in BCS and BSS Groups in its meeting dated 08.09.2022 and while issuing the impugned Notification dated 01.10.2022, the Provincial Cabinet as well as respondent Nos.1, 2 have failed to appreciate the object of creating the posts of AEOs as contained in the working paper of March 2001 (reproduced in para-2 above) as well as the minutes of the meetings of the Provincial Cabinet dated 21st/22nd March 2001 and 30.06.2001 and in this regard all the concerned have also ignored the relevant facts as well as the proposal made in the working paper dated 23.10.2017 (para-37 above) for restructuring and reorganization of Service Groups of AEOs as 3rd cadre under the Administrative control of S&GAD.

61. While deciding to restore merger of AEOs in BCS and BSS Groups in its meeting dated 08.09.2022 and while issuing the impugned Notification dated 01.10.2022, the Provincial Cabinet as well as respondent Nos.1 & 2 have failed to appreciate that the relevant Service Rules applicable to BCS and BSS Groups as well as the relevant Service Rules applicable to both the Service Groups of AEOs are still intact and same have not been amended or repealed.

62. The working paper of March 2001 and the minutes of the meeting of the Provincial Cabinet dated 21st/22nd March 2001 and 30.06.2001 reveal that both the Service Groups of AEOs were not created for establishment of District Governments i.e. offices of Zila

Nazims and Naib Nazims. Hence reorganization/abolition of District Governments (offices of Zila Nazims and Naib Nazims) by promulgation of Balochistan Local Government Act 2010 cannot be made a basis for adjustment/absorption of both the Service Groups of AEOs in BCS and BSS Groups under section 11-A of the Act of 1974.

63. The conduct of the Finance and P&D Departments of GoB to repel the posting of AEOs in both the Departments, the anxiety of AEOs for their absorption in BCS and BSS Groups and improper decisions of GoB (i.e. the Chief Minister and the Provincial Cabinet) as well as respondent Nos.1 & 2 have led to an anomalous situation which has jeopardized the longstanding service career of AEOs having been appointed on 21.10.2002.

For the above reasons, both the Constitution Petitions are accepted. The impugned Notification dated 01.10.2022 issued by respondent Nos.1 & 2 to restore the merger of AEOs in BCS and BSS Groups of S&GAD under section 11-A of the Act of 1974 is declared null, void and of no legal effect.

GoB is directed to decide the fate of both the Service Groups of AEOs in accordance with law keeping in view the working paper of March 2001, the decisions of the Provincial Cabinet dated 21st/22nd March 2001 and 30.06.2001, the common judgment dated 25.09.2017 passed by the Supreme Court of Pakistan (para-36 above), the proposals made in the working paper dated 23.10.2017 (para-37 above), the common order dated 29.03.2022 passed by the Supreme Court of Pakistan (para-46 above) and all the relevant facts as well as

the Service Rules applicable to BCS and BSS Groups of S&GAD and the Service Rules applicable to both the Service Groups of AEOs.

Copy of the judgment be sent to respondent Nos.1, 2 and Principal Secretary to Chief Minister Balochistan.

Announced in open Court
on 3rd November 2023

CHIEF JUSTICE

JUDGE.

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