THE FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Appellate Jurisdiction)

Present
Justice Syed Hasan Azhar Rizvi
Justice Muhammad Karim Khan Agha

Civil Appeal No. 112-K/2024
(Against judgment dated 30.08.2022 passed by the High Court of Sindh in C.P-D 6095 of 2021).

Capt. Muhammad Ali Khan
.....Appellant(s)

Versus

Port Qasim Authority, through its Chairman and others
.....Respondent(s)

For the Appellant(s)	:	Malik Naeem Iqbal, ASC Ms. Abida Parveen Channar, AOR
For the Respondent Nos. 1, 2, and 4	:	Mr. Muhammad Arshad Tanoli, ASC Along with Mr. Touseef Ijaz, Manager (HRM), P.Q.A.
For the Respondent No.3	:	Malik Muhammad Aqil Awan, Sr.ASC
Date of Hearing	:	30.03.2026 (Judgment Reserved)

JUDGMENT

Syed Hasan Azhar Rizvi, J.— This appeal, under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ('**Constitution**'), filed with the leave of the Court, is directed against the judgment dated 30.08.2022 ('**impugned judgment**') passed by the High Court of Sindh, Karachi ('**High Court**'), whereby a Constitution Petition filed by the appellant under Article 199 of the Constitution was dismissed. Through the said petition, the appellant has challenged the legality of the seniority list dated 26.12.2019 ('**impugned seniority list**') issued by respondent No.1, Port Qasim Authority ('**P.Q.A.**'), in which the appellant was shown junior to respondent Nos. 3 and 4 ('**private respondents**').

2. The case of the appellant, as set out in the petition, is that he and the private respondents, pursuant to the recommendations of the Departmental Selection Committee ('**Committee**), were appointed to the

vacant posts of Pilot/Tug Commanders (BS-19) on a one-year contract basis. According to the merit assigned by the Committee, the appellant was placed in the 3rd position, while the private respondents were placed in the 4th and 5th positions, respectively. Subsequently, their services were regularized by the P.Q.A. After more than seven years of regular service, the P.Q.A. issued the impugned seniority list of the officers (BS-19) of the Marine Operations. The P.Q.A., instead of following the merit assigned by the Committee, placed the private respondents above the appellant in the impugned seniority list on the basis of their dates of joining, as the appellant had joined service one day later than the private respondents. Upon receiving the impugned seniority list, the appellant promptly filed objections before the respondent No.2, vide letter dated 11.01.2020. Due to the non-decision of his objections, the appellant sent a reminder dated 10.12.2020. Even thereafter, the respondent No.2 has neither addressed the objections nor corrected and finalized the seniority list to date. Being aggrieved, the appellant was constrained to file a Constitution Petition before the High Court; however, the same was dismissed through the impugned judgment. Hence, this appeal, with the leave of the Court.

3. It is relevant to mention here that this Court was established through the Constitution (Twenty-Seventh Amendment) Act, 2025, with exclusive jurisdiction to hear appeals arising from judgments, decrees, or final orders of the High Courts passed under Article 199 of the Constitution, subject to the grant of leave under Article 175F(1)(c) of the Constitution. Consequently, the Supreme Court ceased to have jurisdiction over such matters, and the present case, being of that nature, automatically stood transferred to this Court by virtue of Article 175F(2) of the Constitution. Whereafter it was fixed before this Bench by the Hon'ble Chief Justice of the Federal Constitutional Court for adjudication in accordance with law.

4. The learned counsel for the appellant contends that the impugned judgment passed by the High Court is contrary to law and the settled principles governing the determination of seniority. He submits that the appellant and the private respondents were appointed through a common selection process conducted by the Committee, wherein *inter se* merit was duly determined and assigned. In such circumstances, the *inter se* seniority is to be governed by the merit position assigned by the

Committee at the time of initial appointment on contract, and not by any subsequent or extraneous consideration. He further argues that the appellant was placed at the 3rd position, whereas the private respondents were placed at the 4th and 5th positions, respectively, in the merit list; therefore, the appellant was lawfully entitled to rank senior to them in the seniority list. The action of the respondent No.2 in disturbing this settled position by placing the private respondents above the appellant in the impugned seniority list is arbitrary, unlawful, and without any legal justification. It is next contended that the reliance placed by the respondent No.2 on the dates of joining is misconceived and contrary to the law, particularly when the appointments were made pursuant to a single selection process. Lastly, it is argued that the High Court failed to properly appreciate the factual and legal aspects of the case and erred in dismissing the Constitution Petition. The impugned judgment does not address the settled principle that merit-based seniority cannot be disturbed on the basis of date of joining in cases of simultaneous appointments. On these grounds, the learned counsel prays that the impugned judgment be set aside, the impugned seniority list be corrected in accordance with the merit assigned by the Committee, and the appellant be restored to his rightful position above the private respondents.

5. The learned counsel for the respondents No.1, 2, and 4 argued that the private respondents joined the P.Q.A. on 09.10.2009, whereas the appellant joined on 10.10.2009. In pursuance of the Board Resolution No.85/2007 dated 10.11.2007, their services were regularized with effect from their respective dates of joining the P.Q.A. This position is further supported by Regulation 62(4) of the Port Qasim Authority Employees Service Regulations, which provides that the regularization of the employees shall take effect from the date of their joining the P.Q.A. He further contended that the appellant, *mala fide*, failed to disclose that the P.Q.A. had earlier issued a provisional seniority list dated 07.03.2017, wherein the appellant was also shown junior to the private respondents. The appellant did not file any objections to the said list; consequently, the P.Q.A. finalized the seniority list on 04.01.2018, approximately one year after issuance of the said provisional list. Although the appellant later filed objections on 11.01.2020 against the impugned seniority list, the earlier list dated 07.03.2017 had already attained finality; therefore, the objections were misconceived and did not warrant any response. To refute

the claim of the appellant, the learned counsel also placed reliance on a clause in the initial contract between the appellant and the P.Q.A., which expressly provided that '*this contract appointment does not confer any right for being placed in the gradation/ seniority list…*'. He finally submitted that no illegality or arbitrariness has been demonstrated to justify interference in constitutional jurisdiction, and the High Court has rightly dismissed the petition. Therefore, the present appeal merits dismissal.

6. The learned counsel for the respondent No.3 advanced arguments on similar lines to those made by the learned counsel for respondents No.1, 2, and 4. To avoid repetition and unnecessary prolixity, the same are not restated here. However, it was additionally argued that the appellant had neither challenged the findings of the High Court on the question of laches nor criticized the same during the arguments. Consequently, the findings of the High Court to this extent have remained unchallenged, and the instant appeal is liable to be dismissed on this ground alone.

7. We have heard the learned counsel for the parties at length and have carefully perused the material available on the record with their able assistance. Per the record, the undisputed facts are that the appellant and private respondents were appointed in the P.Q.A. on a contract basis for one year to the vacant posts of Pilot/Tug Commanders pursuant to an advertisement dated 24.07.2009, published in *Daily Dawn*. These officers were duly recommended for appointment by the Committee, vide its minutes of meeting dated 29.09.2009. The Committee, after examining the results of the written test and interview, recommended these officers in an order of merit. According to the merit assigned by the Committee, the appellant was placed at the 3rd position, whereas the private respondents were placed at the 4th and 5th positions, respectively, in the merit list. However, the private respondents joined the P.Q.A. on 09.10.2009, whereas the appellant joined on 10.10.2009. Subsequently, their services were regularized with effect from their respective dates of joining the P.Q.A. Taking into account the dates of joining, the P.Q.A. issued the impugned seniority list, wherein the appellant was shown junior to the private respondents. Since the controversy in the present case essentially centers on the determination of the *inter se* seniority of the appellant and the private respondents, the pivotal question for determination is whether the

inter se seniority of the officers, selected in one batch, is to be determined on the basis of the merit secured by them or on the basis of the dates of their actual assumption of charge or date of joining of the posts to which they were appointed.

8. The above question, therefore, requires examination within the legal framework regulating the recruitment process and the fixation of seniority of the officers of the P.Q.A. The P.Q.A. is a statutory body established under Section 4 of the Port Qasim Authority Act, 1973 ('**Act of 1973**'). The management and administration of the P.Q.A. are vested in a Board constituted under Section 6 of the same Act. Further, Section 50 of Act of 1973 authorizes the P.Q.A. to appoint its officers and other servants as it may consider necessary for the performance of its functions, on such terms and conditions as it may deem fit. To regulate this authority, Section 51 of the Act of 1973 provides that the P.Q.A. shall, through regulations made with the prior approval of the Federal Government, prescribe the procedure for the appointment of its officers and other servants, as well as the terms and conditions of their service. To comply with the above mandatory requirements of Section 51 *supra*, the P.Q.A. framed the Port Qasim Authority Employees Service Regulations, 2011 ('**Regulations of 2011**'). From their very title, it is evident that these regulations govern matters relating to appointment, promotion, termination, and other service terms and conditions of the officers and the servants of the P.Q.A. Insofar as the determination of the seniority of its officers is concerned, Regulation 53 of the Regulations of 2011 is relevant, which provides that the same shall be determined in accordance with the rules and instructions issued by the Federal Government from time to time. Since these Regulations do not itself provide any specific guidance with respect to the determination of the seniority of the officers of the P.Q.A., the Civil Servants (Seniority) Rules, 1993 ('**Rules of 1993**'), framed under Section 25 read with Section 8 of the Civil Servants Act, 1973, as well as other instructions issued by the Federal Government on the subject, are applicable. We, therefore, proceed to determine the above question in the light of the aforesaid legal framework. The precedents governing cases involving similar facts and circumstances may also be considered, as they provide valuable guidance for ensuring consistency and uniformity in the application of the principles regulating seniority.

9. Under Schedule II to the Regulations of 2011, the method of appointment to the posts of Pilot/Tug Commanders (BS-19) is 'initial appointment' only and not by promotion. Against these vacant posts, the appellant and private respondents were appointed, though initially on a one-year contract basis, by the appointing authority on the recommendations of the Committee. After the recommendations by the Committee, it was incumbent upon the appointing authority to issue their appointment letters or employment contracts, as the case may be, simultaneously, since they formed part of a single selection process and constituted one batch. However, it has transpired from the record that the employment contracts of the private respondents were issued earlier on 09.10.2009, whereas that of the appellant was issued on 10.10.2009. When confronted with this discrepancy, the learned counsel for the P.Q.A. failed to furnish any satisfactory explanation and was unable to refer to any provision of law or rule under which the recommendations of a Selection Committee could be implemented in a piecemeal manner at the discretion of the appointing authority. It is a settled proposition of law that appointments made pursuant to a single selection process are deemed to belong to the same batch. The *inter se* seniority of such appointees is to be determined strictly in accordance with the merit assigned to them by the Selection Committee, and not on the basis of the fortuitous date of their joining. Reference in this regard may be made to *Wazir Khan v. Government of N.W.F.P. through Secretary Irrigation, Peshawar and others* (**2002 SCMR 889**) and *Dr. Sabir Zameer Siddiqui v. Mian Abdul Malik and others* (**1991 SCMR 1130**), wherein the Supreme Court of Pakistan has held to a similar effect. Furthermore, Rule 2(2) of the Rules of 1993 also supports the above principle, which unequivocally provides that where two or more persons are recommended through an open advertisement by the Selection Authority, their *inter se* seniority shall be determined in the order of merit assigned by such authority. Therefore, any deviation from the above noted principles would offend the guarantees of equal protection of law and safeguards against discrimination in service, as enshrined in Articles 4, 25, and 27 of the Constitution.

10. Examined from another perspective, it is noted that the employment contracts of the appellant and the private respondents contain an identical provision requiring them to convey their written acceptance of the terms and conditions mentioned therein within seven

days from the date of issuance thereof. This condition clearly demonstrates that the offer of appointment does not attain finality on the date of its issuance; rather, it remains contingent upon acceptance within the prescribed period. Consequently, all recommendees must, *in law*, be placed on an equal footing during this acceptance window, and no right of seniority can accrue merely on the basis of the date on which one recommendee joins duty ahead of the others. The purpose of granting a seven-day period is to afford each recommendee a reasonable opportunity to consider the terms of appointment and either accept or decline the same. Nevertheless, the appointing authority may extend the said joining time, whether on compassionate grounds, on grounds beyond the control of the individual concerned, or otherwise in the exigencies of service. Moreover, in the event of refusal or non-availability of a recommendee within the stipulated period, the appointing authority may revert to the Selection Committee for a fresh recommendation from the remaining candidates on the merit list prepared during the same selection process. This is evident in the present case, where private respondent No. 4 (Capt. Shaikh Naeemuddin) was not part of the original list of four successful recommendees but was subsequently recommended due to the non-availability of one of the original recommendees, namely Capt. Muhammad Irfan. Being so, the marginal difference in the date joining, in the absence of any lawful justification, cannot be made the basis for determining seniority, and the same must necessarily be regulated in accordance with the merit position assigned by the Committee.

11. Even otherwise, if the contention that seniority should hinge upon the date of joining is accepted, it would fundamentally undermine the integrity of the selection process. Such an interpretation would render the merit determined through written examination and interview by the Committee inconsequential and instead introduce an arbitrary criterion based on chance or administrative convenience. It would effectively create a '*first-come, first-served*' regime, prompting a race among the recommendees to join the duty in order to gain an undue advantage in seniority. More importantly, such a practice would vest unfettered and unguided discretion in the appointing authority to manipulate seniority by selectively issuing appointment letters or employment contracts to preferred candidates at earlier dates, thereby defeating the binding effect of the merit list prepared by the Committee. This would not only be

contrary to the settled principles governing public appointments but would also offend the requirements of transparency, fairness, and equality under the law.

12. Alternatively, the learned counsel for the respondents has contended that the seniority of the parties has been determined in accordance with Board Resolution No. 85/2007 dated 10.11.2007, passed on the basis of Regulation 62(4) of the Regulations, 2011, which provides that the regularization of contractual employees is to take effect from the date of their joining. On this premise, it is argued that the appellant, having joined one day later than the private respondents, cannot be treated as senior to them. This contention, though seemingly attractive, is devoid of merit when examined in the light of the overall legal framework noted above. In our understanding, Regulation 62(4) cannot be read in isolation or in a manner that defeats the settled principles governing the determination of seniority. In fact, this regulation is intended to provide a general rule for the regularization of contractual employees in ordinary circumstances. It says nothing about the seniority of persons initially appointed through a single selection process and as part of one batch. Therefore, any interpretation of this regulation that subordinates merit to the fortuitous timing of joining would inevitably lead to arbitrary and discriminatory results and would defeat the very object of a competitive selection process conducted by a duly constituted Selection Committee. In view of the foregoing, the argument advanced by the learned counsel for the respondents is untenable, and the seniority of the above officers cannot be determined on the basis of their respective dates of joining. Rather, the same must be fixed strictly in accordance with the merit assigned by the Committee. Even otherwise, if the appointing authority was not satisfied with the recommendations of the Committee, the proper course, as envisaged under Regulation 6(2) of the Regulations, 2011, was to record reasons for such dissatisfaction and seek approval from the next higher authority for appropriate orders. Admittedly, no such course was adopted in the present case. The appointing authority neither expressed any reservation nor recorded any reason to depart from the merit determined by the Committee, wherein the appellant was placed senior to the private respondents. In the absence of any lawful deviation, the recommendations of the Committee, both regarding selection and merit, were binding and could not be altered indirectly on the basis of the date of

joining. In this regard, reference may be made to *Zia-ul-Haq and others v. Secretary, Ministry of Education, Islamabad and others* (**1991 SCMR 1632**), wherein the Supreme Court of Pakistan made the following important observations regarding the binding nature and sanctity of recommendations made by the Public Service Commission, which are analogous to those of the Committee of the P.Q.A.:

> '*5. ……. The Department, no doubt, gave the dates for joining the appointment but those dates were only directory and did not entail by itself the cancellation of either the selection or the seniority. If the basis of the appointment whenever it took place was the selection made by the Public Service Commission, then the seniority assigned by the Public Service Commission could not be avoided.* ***The Department or the Government had no right except by overruling the Public Service Commission and reporting to it so to deviate from the recommendations of the Public Service Commission, both with regard to selection and the merit of the selectee. There could be no exercise of pick and choose from the recommendations of the Public Service Commission.*** *On this principle, the order appealed against suffers from an inherent inconsistency and is devoid of any legal basis.'*
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> **Emphasis is added.**

13. The High Court failed to properly appreciate the above legal position and erroneously held that seniority is to be reckoned from the date of joining. In arriving at the said conclusion, the High Court placed reliance on the judgment of the Supreme Court in *Bashir Ahmed Badini, D&SJ, Dera Allah Yar v. Chairman and Members of the Administration Committee and Promotion Committee of the High Court of Balochistan and others* (**2022 SCMR 448**) by making a particular reference to its observation '*that seniority is to take effect from the date of regular appointment and that service rendered prior to regularization would have no bearing on the issue of seniority*.' There can be no cavil with the said observation of the Supreme Court, as it embodies a settled principle of service jurisprudence. However, this principle is inapplicable to the present case because Regulation 62(4) of the Regulations, 2011 created a special exception to the said settled principle by providing that the regularization of contractual employees shall take effect from the date of their joining in the Port Qasim Authority, subject to the condition that their initial contractual appointments were made in accordance with the instructions/procedure prevailing in Government Departments. No doubt, the Regulation 62(4) of the Regulations of 2011 provides for the retrospective regularization of contractual employees. Even then, such

employees could not be treated as senior to those who had joined the service on a permanent basis during the period of their contractual employment. At present, we are not dealing with a dispute between employees who were retrospectively regularized and those who were appointed on a permanent basis during the period of such contractual employment. Rather, the present controversy pertains to the determination of the seniority of the employees (who have been regularized) recruited on a contractual basis through a single selection process in one batch. Therefore, while such employees shall be deemed to have been regularized from the date of their joining, their seniority shall nevertheless be determined in accordance with the merit assigned by the Committee.

14. Moreover, the High Court, in an unwarranted attempt to draw a nexus between seniority and the date of joining, has misplaced reliance upon, and erroneously treated as analogous, the judgment of the Supreme Court in *Justice Muhammad Farrukh Irfan Khan v. Federation of Pakistan* (**PLD 2019 SC 509**). A careful reading of the said judgment reveals that it pertains to the issue of *inter se* seniority of the Additional Judges of the Lahore High Court who were appointed as such through the same notification. The petitioner therein, *Justice Muhammad Farrukh Irfan Khan*, as he then was, was unable to take the oath on the scheduled date, as he was abroad when the then Chief Justice of that Court administered the oath to the other appointees. He, however, took the oath on the following day. Upon representations made by Judges who were initially placed junior to him, the then Chief Justice re-fixed the seniority and ranked him junior to those who had taken the oath earlier. Being aggrieved, he invoked the jurisdiction of the Supreme Court under Article 184(3) of the Constitution; however, his petition was dismissed. In the said judgment, the Supreme Court, while interpreting Article 194 of the Constitution, held that a person enters the office of a Judge or an Additional Judge only upon taking the prescribed oath. It was further clarified that, until such oath is taken, the appointee does not assume the office and the post remains vacant. This interpretation is rooted in the constitutional scheme, where the taking of an oath is a condition precedent to the assumption of judicial office and the exercise of its powers. However, the ratio of the said judgment is confined to the constitutional framework governing the seniority of the Judges of the

Superior Courts, where the oath is not a mere formality but a mandatory constitutional prerequisite for entering office under Article 194 of the Constitution. No similar provision exists in service law, where appointment, regularization, and seniority are determined through statutory rules and administrative actions rather than the constitutional act of taking an oath. Therefore, the reliance placed by the High Court on the aforesaid judgment is inappropriate. The factual and legal foundations of that case are fundamentally distinct, and its application to the present matter, which arises in an entirely different statutory context, is unwarranted. Consequently, the said judgment is inapplicable to the facts and circumstances of the present case.

15. As far as the argument of the respondents regarding the plea of laches is concerned, it is noted that their stance is that the appellant did not file any objections to the provisional seniority list dated 07.03.2017; consequently, the P.Q.A. issued the final seniority list dated 04.01.2018, approximately one year thereafter. It is further contended that although the appellant subsequently filed objections on 11.01.2020 against the impugned seniority list dated 26.12.2019, the earlier list dated 07.03.2017 had already attained finality; therefore, the objections raised by the appellant were misconceived and did not warrant any response. Moreover, the appellant had neither challenged the findings of the High Court on the question of laches nor criticized the same during arguments, and no leave was granted to examine this aspect of the case. The appellant has, however, vehemently controverted the above position, asserting that the respondents No. 1 and 2 have failed to produce any evidence on record to establish the factum of circulation or receipt of the above seniority lists by them, as alleged. Moreover, the appellant has categorically disputed the above finding of the High Court in the body of his petition. In light of the respective submissions, the record has been carefully examined, and the stance of the appellant is found to be correct. None of the seniority lists available on record bears any acknowledgment of receipt by the appellant, nor have the respondents produced any office record to demonstrate that the lists were duly circulated among the officers of the P.Q.A or received by the appellant. In the absence of proof of service or acknowledgment, the mere inclusion of a routine endorsement, such as '*a copy is forwarded for information and circulation amongst all concerned'*, on official correspondence is insufficient to establish actual official communication.

It is a settled principle that the plea of laches or acquiescence can only be sustained where it is shown that the aggrieved party had knowledge of the impugned action and, despite such knowledge, failed to act within a reasonable time. The first provisional seniority list was allegedly issued by the P.Q.A. more than seven years after the regularization of the appellant and the private respondents. However, the respondents No. 1 and 2 have failed to provide any plausible explanation for the non-issuance of a seniority list during such a long span of time. They were, *in fact*, required to circulate and update the seniority list on a regular basis and after each fresh recruitment. This omission further undermines their stance, as the periodic issuance and proper circulation of seniority lists are essential to ensure transparency and to afford affected officers a timely opportunity to raise objections, if any. In the present case, since the respondents have failed to establish that the appellant had due notice or knowledge of the earlier seniority lists, the plea of laches is devoid of merit and cannot be invoked to defeat the appellant's claim.

16. The High Court, however, failed to take into account the aforementioned material facts and circumstances of the case and concluded that the appellant had challenged the first provisional seniority list belatedly and was, therefore, not entitled to any relief. In support of this approach, the High Court relied upon *Federation of Pakistan through Secretary Establishment, Islamabad v. B.A. Tabassum and others* (**1995 SCMR 1229**) and *Sarosh Haider v. Muhammad Javed Chundrigar and others* (**PLD 2014 SC 338**), wherein the Supreme Court, while deprecating unduly delayed challenges to seniority lists, held that delay could be fatal to such a challenge and further observed that the failure of a person to agitate his grievance at successive stages may amount to acquiescence and/or abandonment of the claim. It is noted that in *B.A. Tabassum*, the department, *on its own motion*, revised a seniority list after three years of its issuance. Consequently, the aggrieved officer, B.A. Tabassum approached the Service Tribunal, which accepted his service appeal and restored his seniority as fixed in the original list. Being dissatisfied, the Federal Government assailed the said decision before the Supreme Court; however, it did not succeed. The Supreme Court, while dismissing the Government's petition, observed that once a seniority list is issued and attains finality, particularly where no aggrieved officer files any representation within a reasonable time, it cannot subsequently be revised

by the department *on its own* motion after a considerable lapse of time. However, in the present case, the department has not revised the seniority list *on its own*. Rather, the appellant, being aggrieved, filed an objection petition dated 11.01.2020, followed by a reminder dated 10.12.2020, seeking a decision thereon. It is true that, in the above judgment, the Supreme Court deprecated the belated revision of a seniority list by a department acting *suo motu* without any formal representation by an aggrieved officer; however, it did not lay down any principle of law prescribing a reasonable period for challenging a seniority list. Moreover, the rationale of the said judgment was to prevent arbitrary reopening of settled matters by the administration, not to curtail the right of an aggrieved officer to seek redress. Therefore, where an affected person promptly invokes the available remedies, the bar of finality does not operate with the same rigour. Accordingly, the reliance placed by the High Court on the said judgment in the impugned decision is wholly misplaced, as the factual matrix and the underlying legal considerations are materially distinguishable.

17. Insofar as the case of *Sarosh Haider* (supra) is concerned, it is noted that the said case pertained to a service dispute relating to seniority under the Sindh Civil Servants (Probation, Confirmation and Seniority) Rules, 1975. In that case, the Supreme Court, while allowing the appeal, set aside the impugned judgment of the High Court of Sindh, which had affirmed the order of the Chief Secretary granting seniority to respondent No.1 (before the Supreme Court) over the appellant (before the Supreme Court). The Court held that respondent No.1 had remained silent and had not raised any objection to the successive seniority lists for a considerable period of more than nine years. Consequently, the appellant, who had been shown senior in the seniority list, had enjoyed that position for a substantial period and had thereby acquired a vested right, which could not subsequently be disturbed, as the principle of locus poenitentiae would come into play. The factual position in the present case, however, is entirely distinguishable. Here, the respondents have failed to establish that the appellant had due notice or knowledge of the seniority lists in question; therefore, no question of acquiescence or delay attributable to the appellant arises. Consequently, the reliance placed by the High Court on the said judgment is wholly misplaced. It is, moreover, pertinent to note that the said judgment, in fact, lends support to the case of the present

appellant. The Supreme Court therein reiterated the settled principle, *albeit* in the context of Rule 11 of the above Rules of 1975, that the *inter se* seniority of civil servants appointed in the same batch or on the same date is to be determined in accordance with the order of merit assigned by the Selection Authority, a principle which has already been affirmed by us in the preceding paragraphs. Therefore, the reliance placed by the High Court on the aforesaid judgment is inappropriate. We have also considered all the other judgments relied upon by the respondents; however, the same are of no assistance to them, as they are distinguishable on both legal and factual grounds.

18. Similarly, the contention of the respondents that the clause contained in the original employment contract between the appellant and the P.Q.A., which expressly provided that '*this contract appointment does not confer any right to be placed in the gradation/seniority list…*', bars the appellant from asserting any claim to seniority contrary thereto on the ground that the same had been accepted by him of his own free will at the time of his appointment, is equally misconceived and untenable. We are unable to subscribe to this argument, *firstly*, because the appellant, being unemployed and under the apprehension of losing the opportunity of employment, had little choice but to accept the appointment on whatever terms and conditions were offered by the employer. *Secondly*, an employer, being in a dominant position of authority and bargaining power, can often compel an employee to accept onerous contractual terms under the threat or apprehension of losing employment. Such a clause, therefore, cannot be construed as an absolute waiver of a statutory or legal right, particularly when the determination of seniority is governed by the applicable service rules and regulations rather than by private contractual stipulations. The Similar observations have been made by the Supreme Court of Pakistan in *Pakistan and Others v. Public at Large and Others* (**PLD 1987 SC 304**), *Ikram Bari and Others v. National Bank of Pakistan through President and another* (**2005 SCMR 100**), and *Khalid Mehmood v. State Life Insurance Corporation of Pakistan and others* (**2018 SCMR 376**). The contractual conditions inconsistent with statutory rules or public policy cannot override the rights conferred by law. Being so, the above clause, being inconsistent with the Rules of 1993 as well as the Regulations of 2011, has no legal effect at all. We are, therefore, of the firm view that, in the present case, the High Court, while rendering the

impugned judgment, failed to properly comprehend the intent and object of the aforesaid laws and, instead, misconstrued and misinterpreted the same, thereby resulting in a miscarriage of justice. Consequently, the impugned judgment, being unsustainable in the eye of the law, is liable to be set aside.

19. For the foregoing reasons, the appeal is allowed, and the impugned judgment dated 30.08.2022 passed by the High Court of Sindh is set aside while holding that the *inter se* seniority of the appellant and the private respondents shall be determined in accordance with the order of merit assigned by the Committee, and not on the basis of the dates of their joining. Accordingly, the impugned seniority, including all other seniority lists, issued by the Port Qasim Authority, wherein the appellant (Capt. Muhammad Ali Khan) has been shown junior to respondent No. 3 (Capt. Syed Muhammad Irfan) and respondent No. 4 (Capt. Shaikh Naeemuddin), is also set aside. The Port Qasim Authority is directed to issue a revised seniority list in accordance with the above determination. No order as to costs.

20. Before parting with this judgment, it is pertinent to observe that it is a widespread and undesirable practice among many government departments, including statutory bodies and Government-owned or controlled organizations that updated seniority lists of their officers are either not issued at regular intervals or are not revised promptly after promotions or the fresh recruitment, as in this case, the provisional seniority list was issued after more than seven years of the regularization of the appellant. Such inaction often results in avoidable disputes at a later stage, particularly when promotion cases arise, thereby leading to unnecessary litigation and administrative uncertainty. The timely preparation, revision, and circulation of seniority lists is not a mere formality; rather, it is an essential component of transparent and fair service administration. It ensures clarity in the service structure, safeguards the rights of officers, and minimizes the risk of arbitrariness and favoritism. The failure to maintain and communicate updated seniority positions undermines institutional efficiency and erodes the confidence of the officers in the system. Moreover, in the contemporary era of digital governance, there is no justification for withholding such information from the concerned officers or the public. The right to access

information relating to public affairs, including the service structure of government departments, is a fundamental right guaranteed under Article 19A of the Constitution. The maintenance and disclosure of updated seniority lists are not matters of administrative discretion or grace, but rather legal obligations flowing from the constitutional mandate of transparency. Therefore, for the proper and efficient administration of every service, cadre, or post, it is directed that:

a) the appointing authorities, in all Government Departments, including statutory bodies and Government-owned or controlled organizations, shall ensure the timely preparation, maintenance, and circulation of seniority lists of the members for the time being of such service, cadre, or post immediately after every fresh recruitment, promotion, regularization, or any other change affecting seniority;

And

b) the appointing authority shall, in the month of January each year, cause the seniority lists to be reviewed and updated. Such updated seniority lists shall not only be circulated among all concerned but shall also be uploaded and regularly updated on the official websites of the respective departments.

21. The office is directed to send a copy of this judgment to all Chief Secretaries of the Provinces as well as to the Secretary, Establishment Division, Government of Pakistan, Islamabad, with the direction to disseminate the same to all administrative departments under their respective control, so as to ensure uniform compliance with the above directions in *letter and spirit*.

Judge

Judge

Announced in open Court
on 21/05/2026, at Karachi.

APPROVED FOR REPORTING
*Ghulam Raza/**