



**GOVERNMENT OF THE PUNJAB
HIGHER EDUCATION DEPARTMENT**

Dated Lahore, the 15th November, 2023

ORDER

NO. S.O(DM)3-93(P/B)(P-1). WHEREAS, Muhammad Afzal Bhalli, Director Physical Education (BS-17/Rtd), formerly posted at Government Graduate College of Commerce, Qasimpur Colony, Multan filed appeal against the order dated 20.02.2023 passed by the Secretary Higher Education whereby his time scale promotion was withdrawn ab-initio.

2. **AND WHEREAS**, comments were obtained from the Administrative Department. Mr. Muhammad Asan Waheed the then Secretary (Archives), S&GAD was appointed as Hearing Officer to afford personal hearing to the appellant and submit a detailed report to arrive at a definitive decision.

3. **AND WHEREAS**, the then Secretary (Archives), S&GAD after affording personal hearing to the appellant in the presence of the Departmental Representative of Higher Education Department submitted hearing report stating there in that the appellant reiterated the points already raised in his appeal. He contended that the order dated 20.02.2023 was withdrawn on the basis of introduction of service structure which was notified by the Secretary, Higher Education on 07.08.2017 and service rules on 05.10.2018. He pointed out that after a lapse of six years, the service structure was not implemented till then. In these circumstances, he was full and legally entitled to the grant of two-step timescale upgradation. Subsequently, the appellant retired from service w.e.f. 05.02.2022 and after his retirement the withdrawal of the order dated 15.09.2022 is not maintainable in the eyes of law. He further stated that the Secretary Higher Education / Competent Authority obtained advice from the Finance Department for the grant of timescale upgradation and on the basis of that granted him timescale upgradation, which was correctly granted and its withdrawal was totally against the law. The appellant prayed that the impugned order dated 20.02.2023 might be set aside and the order of the Secretary, Higher Education dated 15.09.2022 might be restored whereby two-step timescale personal upgradation as BS-18 & BS-19 was granted on the basis of the Finance Department Notifications dated 10.04.2019, 10.05.2019 & 21.01.2022.

4. **AND WHEREAS**, on the other hand, the Departmental Representative stated that after selection as Directors Physical Education in BS-16 from PPSC, they were awarded BS-17 (personal). Subsequently, on acquiring Master Degree in Physical Education, they were awarded BS-17 on regular basis. The Higher Education Department, Government of the Punjab notified the 4-tier formula for promotion / appointment @ 03:19:36:42 of Director Physical Education vide order dated 07.08.2017. Bifurcation of the posts are as under:

| (03%) / Senior Chief DPE (BS-20) | (19%) / Chief DPE (BS-19) | (36%) / Senior DPE (BS-18) | (42%) / DPE (BS-17) | Total |
|----------------------------------|---------------------------|----------------------------|---------------------|-------|
| 03 | 17 | 31 | 36 | 87 |

Thereafter, the Services & General Administration Department notified the service rules of the Commerce's stream, which were notified on 05.10.2018 and the final Seniority list of the Director Physical Education (Male & Female) as stood on 01.07.2021 was also notified by the Director Public Instructions (Colleges), Lahore vide letter dated 15.07.2021. As per revised / notified service rules of the Commerce's stream, the method of recruitment for the post of Senior DE/BS-18 is as under:

"100% by promotion on the basis of seniority-cum-fitness from amongst the Director Physical Education BS-17 with 05 years regular service having successfully completed mandatory training for the promotion".

5. **AND WHEREAS**, subsequently, the Finance Department issued policy guidelines regarding promotion / Time Scale Upgradation vide advice dated 19.04.2019 which stipulated that the officers / officials who have served for more than 10 years of service in the same scale even if they have opportunity of promotion. but they are not promoted due to a few number of posts in the upper tier may be up-graded to the next scale as personal to them as onetime dispensation, subject to the condition that they possess good / satisfactory service record. The officers in BS-16 and above having stagnant posts may also be allowed Time Scale Promotion on completion of 10 years' satisfactory service twice in their service. In pursuance of the above-quoted policy of the Finance Department, the request of the appellants was forwarded to the Director Public Instructions (Colleges) for comments / report vide Higher Education Department's letter dated 21.03.2022. The DPI Colleges after examining the case in the light of notifications dated 19.04.2019, 21.01.2022 and

04.01.2016 furnished its report on 16.06.2022 stating therein that their cases might be considered for Time Scale Personal Upgradation as per the Finance Department letter / advice referred to above as they have not been promoted since their appointment after completing the requisite length of service and thus they were feeling dejected. In pursuance of the above, the incumbent DPEs including the appellants were granted Time Scale Promotion to BS-18 & BS-19 as 1st stage and 2nd stage respectively in the light of advice of the Finance Department dated 19.04.2019 and dated 10.07.2019, vide Higher Education Department's order dated 18.08.2022. Meanwhile, the Finance Department, vide advices dated 10.02.2023 dated 17.05.2021, stated that the service structure was notified on 07.08.2017 and service rules were notified on 05.10.2018, but despite the lapse of 03 years, the service structure has not been implemented by the Higher Education Department. Therefore, the claim of the Time Scale Personal Promotion / Upgradation to DPEs of the Commerce stream was declined. Hence, the Higher Education Department was directed to implement the service structure in question.

5. **AND WHEREAS,** After examining the record/material available in the case file it is observed that the advice of the Finance Department tendered on 17.05.2021 could not be examined in its true letter & spirit by the Higher Education Department. The Higher Education Department failed to adopt the said 4-tier service formula in its true letter & spirit. The matter was again highlighted by the Finance Department in its latest advice dated 10.02.2023. Therefore, time-scale promotion cases of DPEs have been re-examined and subsequently, the Higher Education Department withdrew all orders of the Time Scale Promotion (1st Stage in BS-18 & 2nd Stage in BS-19) to rectify the issue in question. Moreover, if the order is illegal then perpetual rights cannot be gained on the basis of an illegal order. Therefore, if any benefit / allowance is wrongly extended to a civil servant due to some misunderstanding, error, or misconception of law or without the sanction of the competent authority, such benefit / allowance cannot be claimed in perpetuity under the guise of the principle of locus potestate. Hence, the applicability of this doctrine depends on the circumstance of each and every case and cannot be applied universally or randomly without adverting to the merits of each case in its peculiar circumstances. Reliance is placed upon 2022 SCMR 201. In the present case, keeping in view the facts and circumstances, the withdrawal of orders by the Higher Education Department was an apt step towards compliance with the law expounded by the Apex Court mentioned supra. The Director of Public Instructions (Colleges) Punjab, Lahore was directed to prepare the working papers

for promotion of the Director of Physical Education vide letters dated 22.02.2023 & 30.03.2023. However, the appellant retired from the government service on 05.02.2022 on attaining the age of superannuation and cannot be considered for promotion in the light of Section 8 of the Punjab Civil Servants Act, 1974.

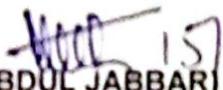
6. **NOW THEREFORE**, under the circumstances, I, **Zahid Akhtar Zaman**, Chief Secretary, Punjab do hereby **reject** the appeal of Muhammad Afzal Bhalli, being devoid of merit..

(ZAHID AKHTAR ZAMAN)
Chief Secretary Punjab

NO & DATE EVEN

A copy is forwarded for information and further necessary action to -

1. The Accountant General Punjab, Lahore.
2. The Deputy Secretary (Service Matters) to Chief Secretary, Punjab
3. The Director Public Instruction (Colleges), Punjab, Lahore
4. The Director of Education (Colleges), Multan.
5. The Deputy Director (Colleges), Multan.
6. The Principal, Government Graduate College of Commerce, Qasimpur Colony, Multan.
7. **Muhammad Afzal Bhalli**, Director Physical Education (BS 17/Rtd), formerly posted at Government Graduate College of Commerce, Qasimpur Colony, Multan.
8. PA to Deputy Secretary (EM), Higher Education Department
9. The Manager, MIS, Higher Education Department


(ABDUL JABBAR) 15/11/2023
SECTION OFFICER (Discipline Male)