

THE HIGH COURT OF SINDH, KARACHI

Before:

Justice Mohammad Karim Khan Agha
Justice Adnan-ul-Karim Memon

CP No D-1742 of 2021

(Saif-ur-Rehman v. Federation of Pakistan & others)

CP No D-1769 of 2021

(Muhammad Mazhar Khan & others v. Federation of Pakistan & others)

Petitioners : through Syed Shoa-un-Nabi advocate

Respondent No. 1 to : through Ms. Wajiha Mehdi Assistant
Attorney General

Date of hearing : 20-05-2025

Date of order : 20-05-2025

ORDER

Adnan-ul-Karim Memon, J., The petitioners request this Court to:

Declare them civil servants from their respective appointment dates.

Declare them entitled to full pension benefits as admissible to other civil servants.

Direct the respondents to issue necessary notifications to formalize their status as civil servants and grant them pensionery benefits.

2. The captioned petitions have been filed by Quaid-e-Azam Mazar Management Board (QMMB) workers and unions against the Federal Government, alleging discrimination in their employment status and pensionery rights. They seek to be treated as civil servants in terms of the decision of the Federal Government vide Office Memorandum (OM) dated 30.11.2005 and decision of the Supreme Court in Civil Petition No. 2384 of 2004, citing past internal approvals.

3. The QMMB maintains the mausoleum of Quaid-e-Azam Muhammad Ali Jinnah, and the petitioners are its employees (BPS-1 to BPS-15). They submitted that Quaid-e-Azam Academy (QAA) employees, whose organization was created by a parliamentary resolution, are treated as civil servants with pension benefits, whereas their case is akin though the QMMB is a statutory body established later on under the Act of Parliament. This is the crux of their discrimination claim, as QMMB employees, despite their crucial role in maintaining a national monument, do not receive similar treatment. The respondents acknowledged prior approvals for QMMB pensions but attributed the disparity to funding issues and differences in organizational establishment.

4. The petitioners' counsel emphasized that a Supreme Court of Pakistan judgment (Civil Appeal No. 154 of 1988) and a subsequent Establishment Division Office Memorandum (November 30, 2005) both established that organizations created by Resolutions are government departments, and their employees are therefore civil servants. He highlighted that the Quaid-e-Azam Academy (QAA), which was founded by a Resolution, has been recognized as a subordinate office of a Ministry, and its staff are consequently treated as civil servants. The petitioners' counsel contended that even after the QAA's merger with the QMMB, QAA employees will retain their civil servant status and benefits, while QMMB employees will not, a clear point of contention. Furthermore, the petitioner's counsel pointed out that a pension scheme for QMMB employees was approved in 1986 by the then Minister for Housing and Works and re-acknowledged by the Federal Secretary, Ministry of National Heritage & Integration, in 2012. However, this scheme was never implemented due to a "non-provision of funds by the Finance Division." He argued that this discriminatory treatment violated Articles 18, 25, and 27 of the Constitution of Pakistan. Finally, the petitioner's counsel asserted that by not recognizing them as civil servants, the authorities are committing contempt of court, given the Supreme Court's earlier pronouncements.

5. The Assistant Attorney General countered the petitioners' discrimination claim, asserting that QMMB employees operate under their own specific rules, while QAA employees are governed by the Civil Servant Act of 1973 due to a Supreme Court decision. She clarified that the QAA was established via a National Assembly Resolution, not an Ordinance. The AAG acknowledged the 1986 approval of a pension scheme for QMMB, but stated it was unimplemented due to a lack of funds from the Finance Division. As an alternative, she noted that QMMB employees receive a Contributory Provident Fund Scheme and financial assistance upon retirement, which she considered an "alternative to pension." Finally, the AAG challenged the territorial jurisdiction of the current court, arguing the matter falls under federal purview and should be heard by the Islamabad High Court. She further contended that the petition is not maintainable, time-barred, and jurisdictionally barred. In support of her contention, she relied upon the case of Mrs. M.N Arshad and others v Mrs. Naeema Khan and others **PLD 1990 SC 612**. She lastly prayed for the dismissal of the instant petition.

6. We have heard the learned counsel for the parties and perused the record with their assistance.

7. Established September 11, 1948, the Quaid-i-Azam Memorial Fund, created through public donations, evolved into the Quaid-i-Azam Mazar Management Board (QMMB) on April 3, 1972, solidified by a 1975 Act of

Parliament. The QMMB is tasked with maintaining the 61-acre Mazar and its 70-acre surrounding area, developing the relic room housing artifacts, and managing ceremonial guards. In contrast, the Quaid-e-Azam Academy is a government-established institution dedicated to research and education on Quaid-e-Azam Muhammad Ali Jinnah, his associates, and the Pakistan Movement. This includes provincial branches like the Quaid-e-Azam Academies for Educational Development (QAED) focusing on teacher training.

8. We have given our thoughtful consideration to the entire matter and have perused pleadings available on record with the adept assistance of learned counsel for the parties as well as case law cited at the bar.

9. It is the admitted position, the terms and conditions of the service of the petitioners governed neither under Civil Servants Act 1973 nor under Rules framed thereunder. As their appointment method is quite different then Section 5 of the Civil Servants Act 1973.

10. The controversy is as to whether respondent No.3/ Management Board of Mazar-e-Quaid-e-Azam, in C.P. No. 1742 of 2021, falls in any of the categories mentioned under the Civil Servants Act 1973 and the conditions set forth under Article 260 of the Constitution, who have been defined as civil servants. Admittedly, the Federation of Pakistan has established the terms for Quaid-i-Azam Mazar Management Board (QMMB) employees, who are governed by Quaid-e-Azam Mazar (Protection and Maintenance) Ordinance, 1971, which designated the reconstituted Quaid-i-Azam Memorial Fund Board (effective April 3, 1972) to manage the Mazar. Further legal backing comes from the 1976 amendment to this Act.

11. The aforesaid factor that distinguishes the status of the employees of the two categories i.e. QMMB and QAA is the exclusion or inclusion of the role of the Parliament in laying down the Rules of service for the employees. Because of the non-conferment of power on the Parliament to make rules, such employees have been held not to be civil servants. That, as a corollary, such status cannot be granted to the employees of the Quaid-i-Azam Mazar Management Board.

12. Elaborating further on the subject issue, the Supreme Court of Pakistan in the case of *Registrar, Supreme Court of Pakistan, Islamabad v. Qazi Wali Muhammad*, **1997 SCMR 141**, has held that “Service of Pakistan is defined in Article 260 of the Constitution as meaning, any service, post, or office in connection with the affairs of a Federation or a Province. This expression also includes an All Pakistan Service and service in the Armed Forces or any other service declared under an Act of the Parliament or a Provincial Assembly as Service of Pakistan. The term 'Civil Servant' is defined in the Civil Servants Act,

1973 as a person, who is a member of an All Pakistan Service or of a civil service of the Federation or a person holding a civil post in connection with the affairs of the Federation, including a civil post connected with the defense. However, a person on deputation to the Federation from any Province or other authority, a person who is employed on a contract or on a work charge basis who is paid from contingencies, and a person who is a 'worker' or workman' as defined in the Factories Act, 1934 or the Workmen's Compensation Act, 1923, are expressly excluded from the category of 'Civil Servant'.

13. In principle, a Civil Servant is a person (i) who fulfills the conditions laid down in Section 2(b) of the Civil Servant Act, 1973 and (ii) whose terms and conditions of service i.e. tenure, appointments, probation, and confirmation, seniority, promotion, termination, reversion, removal, retirement, efficiency, and discipline, pay leave, pension, and gratuity, etc. are governed under the Civil Servant Act 1973 and the rules enacted thereunder. Any person who does not fulfill any of these two conditions materially may not be included in the category of Civil Servant.

14. The Supreme Court of Pakistan in the case of Shahid Iqbal v. Government of Pakistan and another, **1995 SCMR 660** has held that the employees of the Senate do not fall in the category of civil servants because of the provisions contained in Article 87 (3) of the Constitution. However, the Supreme Court of Pakistan in the case of Federation of Pakistan v. Muhammad Nazir, **1998 SCMR 1081**, held that the employees of Pakistan Rangers fell within the definition of a civil servant. The Supreme Court of Pakistan in the case of Commandant Frontier Constabulary Khyber Pakhtunkhwa Peshawar and others Vs. Gul Raqib Khan and others, **2018 SCMR 903**, also held that the employees of the frontier constabulary fell within the definition of a civil servant. The Supreme Court of Pakistan in the case of Chief Election Commissioner of Pakistan v. Miss Nasreen Pervez (**2009 SCMR 329**), held that "obviously the respondent whose terms and conditions were determinable by the Federal Legislature under Article 221 of the Constitution and was governed by statutory Rules are to be considered civil servants". While so holding, the Court distinguished the cases of Mubarik Ali Khan and Qazi Wali Muhammad (ibid) on the ground that the Parliament had not been given any role in regulating the terms and conditions of service of the Court' employees under Article 208 of the Constitution., thus, the principle laid down in the said judgments were held not applicable to the case before the Court because Article 221 of the Constitution, like Article 240 expressly enables the Parliament to regulate the terms and conditions of the employees of the Election Commission of Pakistan. The Supreme Court of Pakistan in the case of National Assembly Secretariat through Secretary v. Manzoor Ahmed and others, **2015 SCMR 253**, has reiterated the aforesaid proposition.

15. The principle emerging from the aforesaid judgments of the Supreme Court is that every person in the “Service of Pakistan”, merely for that reason, cannot be classed as a “Civil Servant” as defined in the Civil Servants Act, 1973. The prerequisites for attracting the definition of a civil servant to any government or public sector employees are laid down in the Civil Servants Act 1973.

16. From the above discussion, it is quite clear that a person may be in the service of the Federation/province but for that reason, he cannot be classed as a 'Civil Servant' as defined in the Civil Servants Act 1973, except the employees whose terms and conditions of service are protected under the constitutional protection.

17. In view of the above discussion, these petitions are disposed of with understanding that the respondents shall reconsider their decision within three months to avoid discrimination amongst the employees of Quaid-i-Azam Mazar Management Board and Quaid-e-Azam Academy.

JUDGE

HEAD OF CONST. BENCHES

SHAFI