

IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No.D-4268 of 2023
[Naeem Hussain & others versus Province of Sindh and others]

Before:
Justice Muhammad Karim Khan Agha
Justice Adnan-ul-Karim Memon

M/s. M.M. Aqil Awan, and Mr. Danish Rashid Khan advocate for the petitioners
 Mr. Ali Safdar Depar, Assistant AG

Dates of hearing & Order: 11.9.2025

ORDER

Muhammad Karim Khan Agha, J. Petitioners have filed this petition with the following prayer: -

- a) *That this Court would be pleased to declare that system of appointment of qualified youth in Sindh Province, in government, semi government, autonomous or semi-autonomous bodies is unconstitutional and illegal being worst form of exploitation, slavery and discrimination and cannot be practiced and allowed in the Province of Sindh and may kindly be stopped forthwith because adhocism in any form is neither allowed nor countenanced by the Constitution of Pakistan, 1973;*
- b) *That this Court would be pleased to declare that no temporary and contract appointment can be made against permanent post or which is created for the work of permanent nature, particularly when any such appointment is made after exhausting full selection process meant for regular appointment of a qualified candidate and as such petitioners be treated as permanent officer of BS-11 against the post of Sub-Engineer in the Sindh Public Health Engineering & Rural Development Department by way of initial recruitment, with effect from date of their initial appointment.*

In alternate

- c) *Respondents may kindly be directed to regularize the petitioners as having qualified for the job through a selective process and worked with effect from October 2018 continuously without any break with effect from date of their initial appointment.*
- d) *To restrain the respondents from putting them before another selective process for the purpose of their regularization and further restrain them from terminating or dispensing with their services on any pretext, with continued payment of their monthly salaries, during the pendency of present petition.*

2. Petitioners, who were recruited as Sub-Engineers in the Public Health Engineering Department, Government of Sindh, in October 2018, are challenging their appointment on a contract basis. They submit that because their posts and work are permanent, they should not have been hired on a contract as such their initial appointment may considered as permeant appointment with effect from the date they were hired.

3. The counsel for the petitioners argued that the government's attempt to delay the case, which questions the legality of contract appointments for permanent posts, led to a summary being sent to the Chief Minister of Sindh. This summary proposed regularizing the petitioners, either through a new law or by having them assessed by the Public Service Commission (SPSC). The petitioners were subsequently assessed, qualified by SPSC, and regularized on March 28, 2025, by the respondent department. The counsel raises several legal questions in the present petition, whether "contract posts" can be created under the provincial service laws. Whether there is a set procedure for contract appointments in the law? Whether employment without regulated rules is a form of slavery, which is prohibited by the Constitution and the Supreme Court of Pakistan? Whether the SPSC assesses the suitability of contract employees for a BS-11 post? Finally, the counsel questions why the petitioners, who were already hired for a permanent post through a selective process, were put through another selection process by the SPSC. In support of his contentions, learned counsel for the petitioners has relied upon the cases of Shahnawaz and 36 others v. Province of Sindh & 04 others (2023 PLC (CS) 447 and Shahab Usto v. Government of Sindh (2017 SCMR 732).

4. The Assistant Advocate General opposed the petition and argued that the petitioners were hired on a six-month contract, as stated in the original job advertisement. Their contracts were extended multiple times by the relevant authorities based on their performance within the Project Management Unit. He submitted that this Court has ruled that bypassing the SPSC and its competitive selection process for the regularization of contract employees in BPS-16 and above is unacceptable. This is because the fundamental principles of merit and transparency must be upheld for higher-grade public positions. Therefore, even when regularizing employees, the process must still meet the competitive, merit-based standards overseen by the SPSC for the posts of BPS-16 and above, and not below that.

5. We have heard learned counsel for the parties and considered the record.

6. The question is whether a temporary or contract appointment can be made against a permanent position, especially when the selection process is for a regular appointment, and whether the SPSC assesses the suitability of contract employees for a BS-11 post.

7. On October 4, 2024, the Sindh Government referred 117 contractual Sub-Engineers to the SPSC for regularization, despite earlier plans to end their contracts. These engineers were initially hired in 2018 on a six-month contract that was repeatedly extended. After SPSC conducted interviews in February 2025

and found them suitable, the Chief Minister of Sindh approved the regularization of 23 Sub-Engineers on March 28, 2025. The petitioners are requesting that their regularization be backdated to their initial appointment date, rather than being effective immediately.

8. The core argument presented is that in service law, posts are either temporary (time-bound) or permanent (not time-bound). There is no legal concept of a "contract post" as a separate cadre. The Government of Sindh is, therefore, obligated to use regular recruitment procedures for all appointments in basic scales, as appointments on a contract basis have been repeatedly criticized and ruled against by the Supreme Court of Pakistan. The Supreme Court has also dealt with the issues of discriminatory treatment and the regularization of contract or daily-wage employees and elaborated on the rights of temporary workers and the conditions under which they may be granted permanent status. Numerous Supreme Court decisions are cited to support this stance.

9. Appointments to public office, particularly for posts in BPS-1 to BPS-15, must be transparent, merit-based, and made through a competitive process. While legal quotas are permissible, the Sindh Government must make these appointments on a regular, open-merit basis with proper budgetary approval. The practice of making permanent public appointments on a contract or ad-hoc basis is not appreciated by this Court in the case of *Shahnawaz and 36 others v. Province of Sindh & 04 others* (2023 PLC (CS) 447, except for specific exceptions outlined in the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974. This principle is a well-established legal precedent, supported by numerous Supreme Court decisions.

10. The SPSC does not assess the suitability of contract employees for regularization. Its sole function, as defined by Section 8 of the Sindh Public Service Commission Act, 2022, is to conduct competitive examinations and tests for the initial appointment of candidates to permanent government posts. This establishes the SPSC as the primary authority for ensuring transparent and merit-based hiring, not for converting temporary or contract positions into permanent ones. Prima facie, the Sindh Public Service Commission was erroneously approached for employees of BS 11, which lacked the authority to issue a regularization order.

11. The Sindh Civil Servants Act, 1973, distinguishes between regular and ad hoc / contract appointments. Section 2(1)(a) defines an "ad hoc appointment" as one made outside the prescribed recruitment method, while Section 2(1)(b) explicitly excludes contract and work-charged employees from being considered civil servants, meaning they do not get the same benefits or protections as

permanent staff. Section 5 mandates that all appointments must follow a formal, rules-based process. Additionally, Section 9 dictates that promotions are based on merit or seniority-cum-fitness. These sections collectively form the legal basis for opposing the regularization of temporary employees without a proper competitive process.

12. The Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974, supplement the main Act and provide procedural details for appointments. Rule 3 states that posts are filled through either promotion/transfer or initial appointment. Rule 6-A establishes a separate Provincial Selection Board for promotions and higher-level appointments (BPS-18 and above), including a provision for the Chief Minister to head the board for BPS-20 and higher posts. This mechanism for promotions is distinct from the SPSC's role in initial recruitment.

13. The law distinguishes between two types of posts, temporary (time-bound) and permanent (not time-bound). Contract appointments are seen as a separate category, and according to legal precedent, there is no formal concept of a "contract post" within the established civil service framework. The general rule is that appointments to public office must be made through a transparent, merit-based, and competitive process, which is the SPSC's specific mandate. This process is the legal standard for a "regular" appointment. The process of regularizing temporary or contract employees is usually carried out through specific legislation, such as the Sindh (Regularization of Ad hoc and Contract Employees) Act, 2013. These acts are often passed to address the job security of employees who have been serving for a long time without a permanent status. These acts typically include their own criteria for regularization, such as a minimum period of service and the employee's eligibility for the post.

14. Several landmark Supreme Court decisions clarified that regularization is a prospective, not retrospective, act. In the case of Muhammad Ashraf Tiwana v. Pakistan (2013 SCMR 1159). This case established that ad hoc employees cannot claim seniority over regularly appointed civil servants. The seniority of an ad hoc appointee is to be counted from the date of their regularization, not their initial ad hoc appointment. In the case of Federation of Pakistan v. Muhammad Azam Chattha (2013 SCMR 120). This decision reinforced the principle that regularization is an appointment from a specific date, and the period of ad hoc service has no bearing on seniority or pay scale from the date of initial appointment. In the case of Board of Intermediate and Secondary Education, Multan v. Muhammad Sajid (2019 PLC (C.S.) 539). This judgment emphasized that an appointment to a permanent post must be made in a transparent manner,

which is the function of the Public Service Commission. Any deviation, even for regularization, must uphold the principle of merit.

15. It has now been settled by the Supreme Court, in the cases of Vice Chancellor Agriculture University, Peshawar and others v. Muhammad Shafiq and others (2024 SCMR 527), Deputy Director Food Faisalabad Division, Faisalabad and others v. Muhammad Taugir Shah and others (2021 SCMR 760) and Province of Punjab through Secretary Livestock and Dairy Development Department, Government of the Punjab, Lahore and others v. Dr. Javed Iqbal and others (2021 SCMR 767) that regularization has to be with immediate effect and that regularization means fresh appointment to the post in question.

16. Based on case law, upon regularization, a contractual employee's status changes to a permanent appointment. This is considered a fresh appointment, not a continuation of their original contract. This principle is supported by three key points that temporary appointments are time-bound and do not grant employees an automatic right to permanent status. Counting service from the initial contract date would violate the constitutional principles of merit and fairness by bypassing the required competitive selection process. Granting seniority from the initial contract date would unfairly discriminate against those who went through the proper, competitive recruitment process.

17. The captioned petition is concluded and disposed of along with pending application(s). However, the respondents must re-evaluate the petitioners' cases based on a previous court decision, the "Shahnawaz" case as discussed supra, as their appointment seems to be through a competitive process.

HEAD OF CONST. BENCHES

JUDGE