

IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No.D-817 of 2023

[Mrs. Naheed versus National Bank of Pakistan & another]

Before:

Justice Muhammad Karim Khan Agha

Justice Adnan-ul-Karim Memon

Mr. Muhammad Fahad advocate for the petitioner
Mr. Fahad Akbar advocate for the respondent / NBP
Nemo for Intervenor.

Date of hearing & order: 22.9.2025

ORDER

Muhammad Karim Khan Agha, J. Petitioner has filed this Constitutional Petition with the following prayer(s): -

- i) *Hold that the act of the respondents not regularizing the service of the petitioner in the National Bank of Pakistan as a liability sales officer (LSO) since the petitioner is performing her duties continuously from 2016 without any complaint, as such, the act of the respondents is illegal, unlawful, and has no legal effect.*
- ii) *Hold that colleagues of the petitioner have been regularized by the respondents in different provinces in compliance of the directions of Honorable High court as well as Honorable supreme court of Pakistan therefore, the act of the respondent is in utter violation of Article 25 of the constitution not giving the same treatment to petitioner for regularizing the service of petitioner as such act of the respondents is illegal, unlawful not sustainable in law.*
- iii) *Direct the respondents to regularize the service of the petitioner, as other colleagues of the petitioner have been regularized; therefore, the petitioner is also entitled to the same treatment for the regularization of her service in the National Bank of Pakistan.*
- iv) *Direct the respondents to issue the appointment order to the petitioner for the post applied by the petitioner and appeared in the interview and online test conducted by the respondents, which were qualified by the petitioner, but the result was not announced, as such, the act of the respondent is based on malafides intention.*

2. Petitioner, a Liability Sales Officer hired by a respondent-NBP in 2016, is suing for the regularization of her service. She submits that her colleagues have been made permanent employees based on a Supreme Court judgment that should also apply to her case. Despite having worked for the NBP and even passing a test and interview, she has been ignored while others were appointed to various positions. The petitioner believes the bank's refusal to regularize her service is an act of malice, and she is seeking the same treatment granted to her colleagues.

3. The petitioner's counsel argued that the bank's refusal to regularize her service is illegal and unconstitutional, as she has worked there for eight years without issue and passed all required tests. The lawyer cited a 2017 Supreme Court ruling on a similar case, which found that using third-party contractors for permanent roles is a "sham" and ordered the regularization of employees. The counsel demanded that the petitioner be granted the same relief as her colleagues, arguing she deserves to be regularized and promoted based on the principle of equity established by the Supreme Court.

4. Ms. Wajiha Mahdi, Learned Assistant Attorney General assisted by Mr Fahad Akbar learned counsel for the National Bank of Pakistan contended that petition is not maintainable as NBP Staff Rules, 1973 stood repealed by NBP Staff Service Rules, 2021, which are non-statutory in nature, therefore, there is no relationship of petitioner with respondent bank in any manner being third party contractor employee, they further repudiated the claim of the petitioner on the ground that the petitioner could not claim her induction into permanent service of the bank, as she was employee of third-party contractor, as such, her claims cannot be entertained, hence petition was/is not maintainable under Article-199 of the Constitution of Islamic Republic of Pakistan. The counsel representing the bank submitted that the petitioner earlier filed the C.P.No.5644 of 2022, which was dismissed for non-prosecution vide order dated 20.5.2025; as such, the case of the petitioner falls within the ambit of res judicata. He also argued that contractual employees do not have a vested right to seek regularization unless there is a statutory basis for such a claim. He added that the Supreme Court in the case of Agriculture University **2024 SCMR 527** rejected the argument that employees should be regularized simply because others in similar positions had been regularized, stating that Article 25 of the Constitution (equality before the law) does not apply to claims based on unlawful acts or illegalities. In support of his contention he relied upon the cases of Vice Chancellor Agriculture University Peshawar and others v Muhammad Shafiq and others **2024 SCMR 527**, Umar Rasheed Malik and others v Federation of Pakistan & others **2022 PLC (CS) 1498**, Waqar Ahmed and others v The Federation of Pakistan and others **2024 SCMR 1877**, Muhammad Arif and others v Federation of Pakistan & others **2025 PLC (CS) 93** and one unreported judgment dated 11.06.2025 passed by the Peshawar High Court, Bannu Bench. He lastly prayed for dismissal of the instant petition.

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

6. The Supreme Court in the case of Muhammad Naeem v. Federation of Pakistan **2023 SCMR 301** ruled that while the National Bank of Pakistan (NBP)

is a statutory body subject to the High Court's jurisdiction, its employees are not federal government employees. The NBP remains a distinct legal entity separate from the federal government. In view of such a ruling, this petition is valid because the petitioner, hired in 2016, was governed by the statutory NBP Staff Service Rules, 1973. Although these rules were later replaced by the NBP Staff Service Rules, 2021, the new rules are not retroactive as her case falls within the writ jurisdiction of this court under Article 199 of the Constitution.

7. There is no cavil to the proposition that regularization is a policy matter and falls within the prerogative of the Executive. Courts should not interfere in policy decisions, especially in the absence of a clear policy. It is now settled that a person seeking a court order under Article 199(1)(a) of the Constitution must prove they have a fundamental or legal right that needs to be enforced. This legal principle is supported by numerous Supreme Court rulings. These decisions consistently state that contract employees do not have a guaranteed right to a permanent position based solely on long service, unless their contract or a specific law says otherwise. Therefore, this Court, when acting under Article 199 of the Constitution, cannot change the terms of an employment contract to favor an employee. The core legal principle from these cases is that, without a law requiring it, an employee has no fundamental right to be made permanent.

8. While the bank benefited from the petitioner's long-term service, it has not made her a permanent employee, claiming she works for a third-party contractor. The petitioner submits that keeping her on indefinite, low-paid, part-time contracts is a form of forced labor and a violation of her constitutional rights. The bank should, therefore, reconsider her case for regularization, subject to their policy of regularization, without discrimination, based on the latest Supreme Court decision, since she is performing duties for the bank.

9. On the issue of third-party contractors, in the case of Abdul Ghaffoor vs. The President, National Bank of Pakistan, **2018 SCMR 157**, the Supreme Court ruled that the bank's practice of using 11-month contracts to employ workers for permanent jobs like janitorial services was an attempt to avoid regularization. The Supreme Court found this to be a deceptive strategy, as the "contractors" were actually manual workers paid a small monthly wage, not genuine contractors supplying manpower. It held that this practice was a violation of the employees' fundamental right to livelihood and that the contracts were invalid for denying the workers permanence.

10. The right to livelihood is a part of the constitutional right to life (Article 9) and cannot be subject to the whims of authorities. While an employee can be terminated, it must be done legally and with justification. The bank's refusal to

regularize the petitioners' employment is arbitrary and a violation of their dignity. Citing the case of Pir Imran Sajid v. Telephone Industries of Pakistan, **2015 SCMR 1257**, the Supreme Court highlighted that government actions must be in accordance with the law, ensuring socio-economic justice and protecting citizens from discrimination (Articles 4 and 25). Public officials must act honestly and fairly, as good governance requires decisions to be just and open, not arbitrary or malicious. Denying someone their livelihood through an unfair or discriminatory act is a failure to uphold these constitutional principles.

11. In a recent ruling, the Supreme Court of Pakistan in the case of “Government of Khyber Pakhtunkhwa Vs Jawad Ali and others (**2021 SCMR 185**) affirmed the legality of outsourcing through contractors, but only when the contractors genuinely control the employees' duties. The Supreme Court distinguished this from "sham outsourcing," where employees are hired for permanent work under the guise of a temporary project. However, this case is different from the Government of Khyber Pakhtunkhwa supra because the petitioner is performing the bank's core functions, proving she is integral to the bank's operations.

12. The Supreme Court in the case of IFFCO Pakistan Vs Ghulam Murtaza and others, **2024 SCMR 1548**, dismissed IFFCO's petitions, upholding this Court's and National Industrial Relations Commission's (NIRC) decisions. The case revolved around whether the respondents, who were hired through contractors, were actually permanent employees of IFFCO. The Supreme Court sided with the employees, noting that the evidence showed a direct employment relationship. It found that the contracts with the third-party firms had expired and were not renewed. The Supreme Court also highlighted that the contractors themselves never appeared to claim the employees as their own. Citing various past Supreme Court rulings, reiterated that outsourcing arrangements used to avoid legal obligations are illegal. It was/is determined that the "control test" and "integration test" proved the employees were integral to IFFCO's core business, and therefore, they were permanent employees. The Supreme Court refused to interfere with the concurrent findings of the lower courts, finding no legal error in their judgments.

13. After reviewing the case documents, this court finds that the petitioners' situation is nearly identical to that of employees in several past cases where the Supreme Court ruled in favor of regularization.

14. Given that this matter has been settled by higher courts, the respondent bank is obligated to treat all similar employees equally rather than forcing them into more litigation. The petitioners' case fits the parameters of previous rulings.

Therefore, this court is granting her the same relief, ordering the respondent bank to reconsider her case for regularization, subject to their policy of regularization if any, without discrimination, based on the latest Supreme Court decision as discussed supra, since she is performing duties for the bank. This petition stands disposed of in the aforesaid terms.

HEAD OF CONST. BENCHES

JUDGE

SHAFI