

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-4397 of 2024
(Shamsher Khan & others v Federation of Pakistan & others)

Date	Order with signature of Judge(s)
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Before:
Mr. Justice Muhammad Karim Khan Agha
Mr. Justice Adnan-ul-Karim Memon

Date of hearing and order:- 06.10.2025

Mr. Asad Ali advocate for the petitioners.
Ms. Wajiah Mehdi, Assistant Attorney General

ORDER

Muhammad Karim Khan Agha, J: The petitioners are asking
this Court to:

- Declare their seniority date as their date of original appointment (May 31, 2009).*
- Direct the Respondents to promote them according to the IPO (Services) Rules, 2022.*
- Cancel or suspend the new recruitment process initiated by the advertisement dated August 22, 2024.*

2. This Constitutional Petition under Article 199 of the Constitution has been filed by employees of the Intellectual Property Organization (IPO) of Pakistan. The petitioners, 12 Junior IP Assistants in the Karachi office, submit that they are being unfairly discriminated against regarding promotions and seniority. They were hired on a contract basis in 2009, and their services were regularized in 2012. Despite over a decade of dedicated service, they have not been promoted to the next rank without legal justification. They allege that the Departmental Promotion Committee (DPC) has met four times but has ignored them, while employees in the Islamabad office have been promoted twice. They claim they were denied promotion because they were working on non-sanctioned posts, and while their regularization occurred in 2012, employees in Islamabad have been granted their rights. They believe they are being victimized for filing a previous constitutional petition in 2009, reported as **2011 PLC CS 709**. Meanwhile, the IPO has advertised new appointments dated August 22, 2024, which the petitioners assert is an attempt to deprive them of their promotion rights and to make them junior to the newly appointed staff. They rely on the IPO (Services) Rules, 2022, and Supreme Court precedents against arbitrary and discriminatory use of authority. They have prayed for this petition to be allowed.
3. It is urged by the petitioners' counsel that the Supreme Court of Pakistan, in Civil Petition No. 9 of 2014 [**2014 SCMR 1289**], provided clear guidance on the regularization of civil/public servants, stating that seniority for civil/public servants should be calculated from their initial appointment date, not their confirmation or regularization. He further

pointed out that under the Rules, *ad hoc*/contract service followed by regular appointment counts towards service length for seniority and promotion. Additionally, the law requires the preparation of seniority lists and outlines eligibility criteria for promotions. The petitioners meet the recruitment criteria, including "service." He requests to allow the instant petition.

4. The learned Assistant Attorney General (AAG) argued that the IPO-Pakistan acknowledges the regularization but defends its actions by stating that the delays were due to administrative and procedural issues. She added that the initial hiring of the petitioners in 2009 was done in "sheer haste and in violation of the rules," leading to its initial cancellation by the Policy Board, later set aside by this Court as discussed *supra*. At the time of the petitioners' regularization in 2012, there were no sanctioned posts in the organization. However, the IPO-Pakistan (Service) Rules, 2022, were only notified in September 2022. The petitioners were then adjusted to sanctioned posts in April 2023. The learned AAG states that officials in the Head Office (Islamabad) were working against sanctioned posts and had clear paths for promotion, whereas the petitioners were working in the Registries against non-sanctioned posts until 2023. The IPO has issued a Provisional Seniority List dated October 30, 2023, and is currently scrutinizing objections. She emphasized that the Promotion cases of the petitioners will be considered upon finalization of the seniority list as per the service rules. She acknowledged the need for new staff as they are operating at only 50% capacity, but assured the court that no recruitment shall be made on seats reserved for promotion. She prayed for dismissal of the petition.

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

6. The petitioners' eligibility and seniority were/is undisputed in terms of their regularization of service, as they were held entitled to the salaries/payment from the date of their appointment. So far as the earlier round of litigation is concerned, it was argued by the respondents that the entire recruitment process was illegal and conducted by an unauthorized person. Therefore, these unlawful appointments could not be protected. However, this Court found no illegality or irregularity in the petitioners' selection process in the aforesaid case, which included a public advertisement in Daily Dawn and compliance with all formalities (test, interview, etc.). Finally, the impugned orders were held unsustainable because the petitioners were condemned unheard, violating principles of natural justice, and were held entitled to the salaries/payment from the date of their appointment.

7. The question for our determination is whether the petitioner's seniority date is to be counted from the date of original appointment, i.e., May 31, 2009, or from the date of regularization of their services in 2012.

8. In essence, ad-hoc/contract appointments cannot be regularized retroactively. Seniority is calculated from the date of regular appointment, not from the start of ad-hoc or contract service. The contract period of a civil/public servant or government employee is not included in their seniority after regularization. Seniority is only calculated from the date of the regular appointment. However, a contractual employee who is later regularized may be eligible for pensionary benefits if they meet the conditions as set forth. A contract employee, who is regularized, shall be placed at the bottom of the seniority list of the respective cadre and shall rank junior to the other civil/public servants. The Supreme Court has ruled that regularizing a contract employee means a fresh appointment, not a retroactive one. This means the individual becomes a civil/public servant from the date of regularization. The Supreme Court in the case of Vice Chancellor Agriculture University Peshawar v Muhammad Shafiq **2024 SCMR 527** has held that the regularization takes effect prospectively from the date when a regularization order is passed.

9. So far as promotion is concerned, in such a situation, the Supreme Court has also held that seniority and merit are to be considered for promotions to selection posts, while seniority-cum-fitness is to be considered for non-selection posts. Service rules determine eligibility for promotion, while fitness is a subjective evaluation based on objective criteria. While consideration for promotion is a right, it cannot be claimed as a matter of right. The government has the authority to determine eligibility criteria, amend rules, and decide on promotions in the interest of service efficiency. The Courts generally avoid interfering with the government's decisions on promotion unless there's a violation of law or infringement of vested rights. The questions raised are answered accordingly.

10. The petitioners' claim for retroactive seniority based on their initial contract appointment is not legally sound for the reason that contractual service cannot be counted for seniority or promotion. Seniority is reckoned from the date of regular appointment. In principle, Regularization is a fresh appointment to the regular cadre, not a continuation of contract service. The Supreme Court consistently holds that regularization has prospective effect from the date of regularization, (2012 in this case), not a retrospective effect (from the contract date). Promotion and seniority are not absolute rights; they are governed by rules and regulations. The petitioners' regularization will be effective from 2012. This position is supported by the Supreme Court decision in Deputy

Director Food Faisalabad Division, Faisalabad, etc. vs Muhammad Tauqir Shah and others vide order dated 10.03.2021.

11. In view of the facts and circumstances of the case, the competent authority of the respondents is directed to give meaningful consideration to the case of the petitioners for promotion to the next rank with their batchmates, as per seniority cum fitness basis, subject to availability of the vacancy, in accordance with law and applicable rules. The aforementioned exercise shall be undertaken within two months.

12. This petition stands disposed of in the aforesaid terms.

Head of the Constitution Bench

JUDGE