

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Const. Petition No.D-1667 of 2024

Present:

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Nisar Ahmed Bhanbhro

Petitioner: Ghous Bux and 31 others,
Through Mr. Mukesh Kumar G. Karara, Advocate

Respondents 1 to 8: Province of Sindh and others
Through Mr. Ali Raza Baloch,
Additional Advocate General Sindh

Date of hearing: **19.08.2025**

Date of decision: **27.08.2025**

O R D E R

Nisar Ahmed Bhanbhro, J: Through instant Petition, the Petitioners have challenged the order dated 17.08.2022 and 12.09.2022 issued by the Finance Department for recovery of excess amount paid to the Petitioners as arrears of salary.

2. It is the case of the Petitioners that they were appointed in Public Health Engineering Department on different dates on Daily Wages / Contingency basis. The then government formulated a policy to regularize the services of the employees, who rendered services on daily wages / contingency basis for a period of more than five years in government departments. The Public Health Engineering Department did not consider the request of Petitioners for regularization, thus they filed CPD No. 1309 of 2011 “Nazeer Hussain Mari & others Versus Province of Sindh and others” and CPD No 3286 of 2011 “Abdul Rashhed and others Versus Province of Sindh and others”, before this Court. Learned Division Bench of this Court allowed the petitions vide order dated 16.10.2012 and 28.11.2012 with directions to regularize the services of the Petitioners from the date they completed five years in service.

3. On notices, the Respondents No 2 filed reply signed by the Chief Engineer Public Health Sukkur, Superintending Engineer Public Health Sukkur and Executive Engineer Public Health Division Khairpur, wherein it was asserted that Petitioners would be entitled for regular salary with effect from the date of regularization which is 21.08.2017.

The Petitioners were paid salaries from 2013 without justification, therefore, were recovered accordingly. The colleagues of the Petitioners had filed CPD No 1255 of year 2022 before this Court, which was dismissed vide order dated 05.10.2023 by Learned Division Bench of this Court. The Petition was misconceived and liable to be dismissed.

4. Respondent No 4 in its reply supported the stance of Respondent No 2 with an assertion that regularization cannot take effect retrospectively. The Petitioners had taken the excess amount of the salary under the garb of retrospective regularization, which is recoverable under the law, therefore, the same is being deducted from the salaries / pension of the Petitioners.

5. Mr. Mukesh Kumar G. Karara, learned Counsel for the Petitioners contended that the Petitioners were taken into regular service pursuant to the orders passed by this Court. He contended that the Order passed by Learned Division Bench of this Court had given a retrospective effect to the regularization of the Petitioners from the date when they completed five years of service. He argued that the Petitioners were rightly paid past salaries from year 2013. He contended that the impugned orders of recovery of excess salary were passed without affording a chance of hearing to the Petitioners, thus were not sustainable under the law. He prayed for allowing the petition.

6. Mr. Ali Raza Baloch Learned Additional Advocate General, contended that the Petitioners were regularized in service from 02.08.2017. The Petitioners were entitled to receive regular salary from the date of regularization. The past salaries were paid to the Petitioners without any lawful authority, thus were rightly ordered to be refunded. He relied upon the judgment passed by the Learned Division Bench of this Court in the case of Anwer Ali Kandhro & others Versus Province of Sindh & others (CPD No 1255 of 2022). He prayed for dismissal of the Petition.

7. Heard Arguments. Perused material available on record.

8. Chronicle of the case of the Petitioners revealed that pursuant to this Court's Orders, passed in CPD No. 1309 of 2011 "Nazeer Hussain Mari & others Versus Province of Sindh and others" and CPD No 3286 of 2011 "Abdul Rashhed and others Versus Province of Sindh and others", Public Health Engineering Department floated a summary for regularization of the work charged and contingency paid employees. The summary was approved by the Chief Minister Sindh. The Secretary Public Health Engineering Department vide notification dated 17.01.2017 constituted committee headed by the Chief Engineer Public Health Engineer Department Sukkur, with Superintending Engineers of respective circles and Executive Engineers of respective

divisions as Members to scrutinize the cases of work charged and contingency paid employees for regularization. Public Health Engineering Department regularized the services of Petitioners vide order dated 21.08.2017.

9. The Petitioners on joining regular service moved applications for grant of past salaries as this Court had ordered regularization retrospectively. The request of the Petitioners for payment of arrears was acceded and they were granted arrears vide orders dated 29.04.2022.

10. During the intervening period, the Provincial Assembly of Sindh enacted THE SINDH (REGULARIZATION OF ADHOC AND CONTRACT EMPLOYEES) ACT, 2013 SINDH ACT NO. XXV OF 2013, (Regularization Act) whereby the services of the employees working on adhoc and contract basis in government departments were regularized. Pursuant to the Regularization Act, employees working on contract and adhoc basis in government departments were taken into regular service with effect from the date of their induction into service. Since the Regularization Act did not apply retrospectively, the Finance department Government of Sindh sought advice from the Services, General Administration & Coordination Department (SGA&CD) on the issue. The SGA&CD vide its letter dated 13.08.2021 tendered its advice that regularization cannot take effect retrospectively, the advice reads as under:

GOVERNMENT OF SINDH
SERVICES, GENERAL ADMINISTRATION
& COORDINATION DEPARTMENT (REGULATION WING)

Subject: **LEGALADVICE.**

The Secretary to Government of Sindh, Finance Department, may kindly refer to his Department's letter bearing No.FD(SR-1)10(1051)/2020 dated 05-04-2021, on the subject cited above.

2. The Regulation Wing, SGA&CD has examined the subject case in consultation with Law, Parliamentary Affairs & Criminal Prosecution Department, Government of Sindh and the advice tendered by the later is reproduced verbatim hereunder;-

“The Advocate General Sindh's advice bearing No.AG-3000 of 2021, dated 14-07-2021, is enclosed for your guidance.”

3. The advice of the Advocate General, Sindh vide letter bearing No.AG-

3000 of 2021, dated 14.07.2021, is reproduced verbatim hereunder:

“I concur that regularization of contract employees cannot be made retrospectively as of the date of promulgation of the 2013 Act and that the question of claiming arrears does not arise.

I also concur with the view expressed in your letter that arrears drawn by employees on account of regularization with effect from the date of promulgation of the 2013 Act ought to be recovered from their salary.”

4. *It is, therefore, requested kindly to take appropriate action as per law & rules, accordingly.*

Sd/- 13.08.2021

(GHULAM MUSTAFA LAGHARI)

SECTION OFFICER (REG-II)

Services, General Administration

& Coordination Department

Government of Sindh

The Secretary to Government of Sindh

Finance Department,

U.O. No.SOR-II(S&GAD)5-6/2021 Karachi dated the 13th. August,2021.”

11. Pursuant to the legal advice tendered by the SGA&CD, the Finance Department vide its Notification dated 21.10.2021 directed the Accountant General Sindh to adjust the differential amount drawn by contract / adhoc employees from the date of regularization (i.e 25.03.2013) commencement date of “The Sindh (Regularization of Adhoc and Contract) Employees Act 2013 to effective date of notifications / order of the regularization in easy instalments as per rules / policy from their monthly salary. The letter dated 21.10.2021 issued by the Finance Department reads as under:

“No. FD(SR-I)10(051)/2020

GOVERNMENT OF SINDH

FINANCE DEPARTMENT

Karachi, the date 21st. October, 2021

To,

The Accountant General Sindh,

KARACHI.

The District Accounts Officer, (All)

Subject:- **ADJUSTMENT OF THE PAID AMOUNT ON
ACCOUNT OF DIFFERENTIAL OF SALARY
ACCRUED DUE TO REGULARIZATION UNDER THE**

SINDH (REGULARIZATION OF ADHOC AND CONTRACT EMPLOYEES) ACT, 2013 FROM RETROSPECTIVE EFFECT.

I am directed to refer on the subject cited above.

Pursuant to Legal Advice of Regulation Wing, Services, General Administration & Coordination Department, Government of Sindh vide U.O letter No.SOR-II(SGA&CD)5-6/2021 dated 13th August, 2021 and with the approval of Competent Authority i.e. Chief Minister, Sindh, it is advised to make adjustment of differential amount drawn by Contract / Adhoc Employees from the date of regularization (i.e. 25.03.2013) commencement date of “The Sindh (Regularization of Adhoc and Contract Employees) Act, 2013” to effective date of Notification / Orders for their regularization, in easy instalments as per Rules / Policy from their monthly salaries with immediate effect.

Sd/-

(GHULAM ASGHAR SUHAG)

SECTION OFFICER (SR-I)”

12. The Finance Department vide its letter dated 17.08.2022 directed the District Accounts Officer Khairpur to start recovery of excess amount from salary / pension of the Petitioners. The District Accounts Officer, Khairpur vide its letter dated 12.09.2022 directed the Executive Engineer Public Health Engineering and Rural Health Department, Khairpur to recover the excess amount paid to the Petitioners, which was accordingly deducted from their salaries.

13. Cursory glance at both, the advice rendered by the SGA&CD and impugned letter issued by Finance Department explicitly evinced that the matter of excess payment pertained to the regularization of the employees done under the provisions of the Regularization Act. Since the Petitioners were work charged or contingency paid employees therefore the provisions of the Regularization Act were not applicable to their regularization. The preamble to the act made the intention of legislation clear that it was enacted to provide for regularization of the services of certain employees appointed on adhoc and contract basis or otherwise (excluding the employees appointed on daily-wages and work-charged basis) in the Province of Sindh, in the manner hereinafter appearing; under section 2 of the act the “appointment of an employee” is defined as the appointment of a duly qualified employee made on adhoc and contract basis or otherwise (excluding the appointment on daily-wages and work-charged basis); the “employee” is

defined as a person appointed to a post on adhoc and contract basis or otherwise (excluding the employee appointed on daily-wages and work-charged basis). Section 3 of the Regularization Act enunciated the principle for regularization of adhoc and contract employees. Section 3 reads as under:

3. **Regularization of services of employees.** *Notwithstanding anything contained in the Act or rules made thereunder or any decree, order or judgment of a court, but subject to other provisions of this Act, an employee appointed on adhoc and contract basis or otherwise (excluding the employee appointed on daily-wages and work-charged basis), against the post in BS-1 to BS-18 or equivalent basic scales, who is otherwise eligible for appointment on such post and is in service in the Government department and it's project in connection with the affairs of the Province, immediately before the commencement of this Act, shall be deemed to have been validly appointed on regular basis.*

14. The Perusal of the above provisions of law envisaged that the work charged and contingency paid employees were excluded from the operation of the Regularization Act. The Petitioners were not regularized under the Regularization Act but they were benefited by the judgment passed by this Court, which given a retrospective effect to the regularization of the Petitioners. Para No 5 of the judgment being relevant is set out below for the sake of convenience:

“5. The upshot of the above discussion is that the petitioners are entitled for regularization like other employees whose services have already been regularized by the respondents. Consequently, we allow this petition and direct the respondents to regularize the services of the petitioners from the date when they completed their five years continuous service, within a period of one month from the date of this order and submit such compliance report to this Court through Additional Registrar”.

15. When confronted, whether the Order passed by this Court was ever challenged by the Government of Sindh, Learned Additional AG frankly conceded that no appeal was preferred, meaning thereby that the order passed by this Court attained finality. It is a settled principle of law that judgment of the Court does not operate retrospective unless otherwise directed. In the present case the regularization of the Petitioners was given a retrospective effect, which remained unchallenged. The case of the Petitioner was not covered under the provisions of Regularization Act; therefore, the impugned letters of recovery did not affect the regularization of the Petitioners.

16. Adverting to the issue of recovery of excess payment of salaries. It is the case of the Petitioners that they stood regularized through Court orders which remained unchallenged, and they were entitled for benefits of the ante-date regularization, it is well established that regularization takes effect prospectively, from the date when a regularization order is passed. This is because regularization is based on several considerations which help gauge not only the competence and ability of the employee, proposed to be regularized, but also the financial impact and long term legal obligations on the employer institution. It is a conscious decision to be taken by the employer institution at a particular time and therefore cannot be given a retrospective effect. The Petitioners were regularized in service vide order dated 21.08.2017, the regularization order reads as under:

**OFFICE OF THE EXECUTIVE ENGINEER
PUBLIC HEALTH ENGINEERING DIVISION- 1 KHAIRPUR**

No EC / 1287 of 2017

Khairpur Dated: 21.08.2017

ORDER

In the light of instructions regarding issue of orders of regularization of 38 work charged employees of Public Health Engineering Division – I Khairpur vide (PHE) 1(1)/2017 dated 21/04/2017 Secretary Public Health Engineering & Rural Development Department Government of Sindh Karachi, that the Honorable Minister, Public Health Engineering & Rural Development Department approved the recommendations of Chief Engineer PHED Sukkur, Chairman Scrutinize Committee for regularization of the 494 work charge employees working in Public Health Engineering Department Establishment vide Chief Engineer Public Health Engineering Department Govt. of Sindh Sukkur No E/PHED/1537 dated 24.04.2017, the following work charged employees are regularized with immediate effect, lists are given below subject to the terms and conditions.

17. Perusal of the regularization order referred above transpired that the Petitioners were taken into regular service from 21.08.2017, they were entitled for the benefits of the regular service from the said date. When confronted, Mr Mukesh Kumar Learned Counsel for the Petitioner candidly conceded that regularization order was not challenged as no appeal or representation was filed by the Petitioners. The Petitioners shall be deemed to have entered into regular service from 21.08.2017, they were not entitled for the benefits retrospectively.

18. This view is fortified by the judgment of Supreme Court of Pakistan in the case of VICE-CHANCELLOR AGRICULTURE UNIVERSITY, PESHAWAR and others Versus MUHAMMAD SHAFIQ and others reported as 2024 S C M R 527, wherein it has been held that:

9. Now coming to the second question raised, given that the regularization of the Respondents cannot take place without the backing of any law, rule or policy, there lies no claim for ante-date regularization. It is well settled that when the basic order is without lawful authority, then the entire superstructure raised thereon falls to the ground automatically. However, if it is the case of some Respondents i.e., Categories B, C, and D who stood regularized through earlier Court orders which remain unchallenged can seek ante-date regularization, it is well established that regularization takes effect prospectively, from the date when a regularization order is passed. This is because regularization is based on several considerations which help gauge not only the competence and ability of the employee, proposed to be regularized, but also the financial impact and long term legal obligations on the employer institution. It is a conscious decision to be taken by the employer institution at a particular time and therefore cannot be given a retrospective effect. Thus, the Respondents in the aforesaid categories cannot claim ante-date regularization.

19. We are of the considered view that the Petitioners stood regularized in service from the date of actualization which is 21.08.2017. The Petitioners were entitled for the benefits of regular service from the said date, for a particular reason that the regularization order did not speak about the regular appointment of the Petitioners retrospectively as ordered by Learned Division Bench of this Court. The Petitioners did not challenge the regularization order, thus the same attained finality.

20. Again, the question arises, whether the Finance department could unilaterally at its own order for the recovery of excess amounts received by the Petitioners under the blanket cover of an advice rendered by the S&GAD for recovery of extra benefits derived by the employees taken into regular service under the provisions of Regularization Act. The Finance Departments looks into the financial matters of the Government and advises administrative department on financial issues. It is always for the administrative department to look into the conduct and discipline of the employees. For the purposes of recovery of any pecuniary loss caused to the Government, the disciplinary proceedings under the provisions of The Sindh Civil Servants (Efficiency & Discipline) Rules,

1973(E&D Rules) were sine qua non. In absence of departmental proceedings penalty of recovery of pecuniary loss cannot be imposed. If during departmental proceedings it is established that pecuniary loss was caused by the Civil Servant, the Competent Authority imposes the penalty provided under Rule 4 of the E&D Rules, which includes the recovery from pay of the whole or any part of pecuniary loss. Rule 4 reads as under:

4. Penalties.-(1) *The following are the minor and major penalties, namely*

(a) Minor Penalties:

censure; (i) withholding, for a specific period, promotion or increment, otherwise than for unfitness for promotion or financial advancement in accordance with the rules or orders pertaining to the service or post;

(ii) stoppage, for a specific period, at an efficiency bar in the time scale, otherwise than for unfitness to cross such bar;

(iii) recovery from pay of the whole or any part of any pecuniary loss cause to Government by negligence or breach of orders;

(b)

21. When the Civil servant is proceeded by the Competent Authority for the charges of misconduct and consequently any final action is taken by way of imposing Penalty under Rule 4 of E&D Rules, the aggrieved civil servant gets a chance to assail the adverse order before the forum created under the law for dealing the matters relating to the terms and conditions of the service by way of filing departmental appeal under Rule 3 of the Sindh Civil Servants (Appeal) Rules 1980 and service appeal before Service Tribunal established under Sindh Service Tribunal Act, 1973 (SST Act).

22. In the case of the Petitioners, the Competent Authority did not hold any departmental proceedings. The Finance Department at its own motion initiated the action of recovery of excess payment, which too without affording an opportunity of hearing to the Petitioners. The recovery action offended the right of the Petitioners as to the Fair Trial enshrined under article 10 – A of the Constitution. The Finance Department through the impugned action encroached upon the powers of the Administrative Department which in our view were untenable under the law. The employee cannot be penalized, without holding an inquiry provided under the E&D Rules.

23. There are three categories of the Petitioners before us. First category, the Petitioners who are still in service, Second Category the retired employees and Third category the widows of the employees withdrawing family pension. The Department can recover the excess amount if any paid to the in-service employees by taking recourse to the Departmental proceedings under E&D Rules or the Sindh Civil Servants Conduct

Rules 2008. For the second category of employees who have retired, the department may initiate departmental proceedings and recover the excess amount from their pension benefits in terms of Rule 1.8 of the Sindh Civil Service Pension Rules 1963. As for as the recovery of amount from the widows withdrawing family pension is concerned, the department cannot deduct the excess amount paid to the deceased employee from the family pension, for the reason that the moment the civil servant died, the departmental proceedings if any vanished automatically and bereaved family cannot be penalized for the wrong which apparently was not done by the deceased employee himself, but to the own admission of the department that the excess amount was disbursed mistakenly.

24. We have carefully examined the judgment passed by the Learned Division Bench of this Court in the case of Anwer Ali Kandhro & others Supra, wherein the Petitions filed by the employees of Public Health Engineering Department were dismissed. In our humble view and with profound submission, the judgment of this Court in Anwer Ali Kandhro case will not operate in rem and will not apply to the case of the Petitioners as the proper assistance was not rendered to the Honorable Court and an impression was raised that the employees in the referred petition were taken into regular service retrospectively under the provisions of Regularization Act. As such the judgment of Learned Division Bench in the case of Anwer Ali Kandhro and others was per incuriam. The Learned Additional AG has placed reliance upon the case of Muhammad Aamir Khan Versus Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue KP and others reported as 2019 SCMR 1021 wherein it has been held that when there already existed in the field an order / judgment of the Bench on the subject which was being dealt with by the Bench in subsequent cases, said earlier order had to be adhered to and in case of different opinion from one taken in earlier order the matter was to be referred to the Chief Justice for constitution of a larger bench. Had it been the case, We would have referred the matter to Honorable Chief Justice for constitution of the larger bench, since we are in total agreement with the esteemed observations made in the case of Anwer Ali Kandhro Supra that the regularization of the employees under the Regularization Act shall take effect prospectively and employees would be entitled to the benefits from the respective dates, therefore, matter cannot be referred for the constitution of larger bench, as issue involved in the present case did not pertain to the Regularization Act of 2013.

25. For what has been discussed herein above, We are of the candid consideration that the impugned letter dated 17.08.2022 did not apply to the case of Petitioner therefore the action of deduction of excess payment from the monthly salary, pension and family pension of the Petitioners through letter dated 12.09.2022 was unjustified, illegal, perverse and without any lawful authority. Consequently, a case for exercise of powers of

judicial review under article 199 of the Constitution of Islamic Republic of Pakistan is made out. This Petition is therefore allowed and the impugned letter dated 17.08.2022 and 12.09.2022 to the extent of Petitioners stand set aside. The Respondents are directed to refund the deducted amount from the family Pension to Petitioners No 30 to 32 within a period of one month from date of this order. The Respondents are left at liberty to initiate disciplinary proceedings for the recovery of excess amount paid to the Petitioners who are in-service and departmental proceedings against the Petitioners who retired from the service in terms of Rule 1.8 of the Pension Rules of 1963 for recovery of excess amount.

26. The Petition stands disposed of in the above terms. Office to send copy of this order to the Respondents for compliance.

Judge

Judge

Sukkur

Dated:27.08.2025

Approved for reporting

ARBROHI/PS