

IN THE HIGH COURT OF SINDH, AT KARACHI

C. P. No. D-1301 of 2024

Present:

Yousuf Ali Sayeed, J
Abdul Mobeen Lakho, J

Petitioners : Javed Aslam Mughal & others
through Riaz Hussain, Advocate.

Respondents : Government of Sindh & others
through Abdul Jalil Zubedi,
Assistant Advocate General Sindh
alongwith Muhammad Naeem
Khanzada, Deputy Secretary,
Government of Sindh Sikandar
Hassan Law Officer, Finance
Department, Azeem Ahmed,
Assistant Accounts Officer and
Muhammad Muzzamil, Senior
Auditor, Pension Section,
Accountant General, Sindh.

Date of hearing : 15.12.2025.

ORDER

YOUSUF ALI SAYEED, J. - The Petitioners were appointed as Medical Officers on a contractual basis by the Health Department, Government of Sindh in the year 1996, with their services subsequently being regularized under the Sindh Regularization of Doctor's Appointed on Contract Basis Act, 2003, with effect from 20.12.2003, after which they remained in service until their respective dates of retirement, completing the ten (10) year period of regular service over and above the time served under contract so as to qualify for pension. They seek that such period for which they served under contract be included for purpose of calculation of their pensions.

2. As things stand, a similar matter was addressed in the Judgment rendered by the Honourable Supreme Court of Pakistan in the case reported as Chairman/Dean Sheikh Zayed Hospital, Lahore v. Amjad Mehmood Khan 2025 SCMR 168, where the Respondent before the Court had initially been appointed to the post of Anesthetist (BS-18) on a contract basis on 03.04.1988, and then regularized vide a Notification dated 11.11.1992, whereafter he remained in regular service until attaining the superannuation on 20.11.2007. However, his contract period of 4½ years was not included in the calculation of his pensionary benefits. As his representations before the department for inclusion of that period remained fruitless, he eventually filed an appeal before the Federal Service Tribunal, which was allowed, and it was that judgment which then came to be impugned by the department before the Supreme Court. The matter gravitated around Regulation 371-A of the Civil Service Regulations, which provides that:

“371-A. Notwithstanding anything contained in Articles 355(b), 361, 368 and 371 of these Regulations, temporary and officiating service, in the case of Government servants who retired on or after the 1st January, 1949, or who joined service thereafter, shall count for pension according to the following rule:-

(i) Government servants borne on temporary establishments who have rendered more than 5 years continuous temporary service shall count such service for the purpose of pension or gratuity excluding broken periods of temporary service, if any, rendered previously, and

(ii) Continuous temporary and officiating service of less than 5 years immediately followed by confirmation shall also count for gratuity or pension, as the case may be.

3. In that backdrop, it was held with reference to Regulation 371-A and earlier caselaw emanating from the Court on the subject, that:-

“12. Perusal of the notification dated 11.11.1992 reveals that the contract appointment of the respondent was regularized. The record reveals that the respondent’s service from his contractual appointment to regularization and retirement was continuous and uninterrupted and this has not been disputed by the petitioner. The only grievance of the petitioner is that the contractual period should not be counted for the calculation of pension. However, established law and decisions of this Court clearly state that the contractual period must be included towards the calculation of pension provided the case falls either under clause (i) or clause (ii) of Article 371-A of the CSR.

13. In the case of Chairman, Pakistan Railway Government of Pakistan, Islamabad and others v. Shah Jehan Shah (PLD 2016 Supreme Court 534) this court has interpreted Article 371-A of the CSR and observed as follows:-

“6. However, it is important to note that Article 371-A presupposes that such a government servant, whether falling under clause (i) or (ii), is otherwise entitled to pension (or gratuity, as the case may be). In other words, Article 371-A cannot be used as a tool to bypass the conditions for qualifying service of pensionary benefits, and such government servant has to fulfill the minimum number of years for grant of pension. This is due to the use of the word “count” as opposed to “qualify” or “eligible”, as rightly argued by the learned counsel for the appellant. As per the settled rules of interpretation, when a word has not been defined in the statute, the ordinary dictionary meaning is to be looked at. Chambers 21st Dictionary defines “count” as “to find the total amount of (items), by adding up item by item; to include”. Oxford Advanced Learner’s Dictionary of Current English (7th Ed.) defines “count” as “to calculate the total number, of people, things, etc. in a particular group; to include sb/sth when you calculate a total; to consider sb/sth in a particular way; to be considered in a particular way”. Thus in light of the above, service rendered for more than five years as contemplated by Article 371-A would only be added, included, or

taken into account for the purposes of pensionary benefits, and not make such government servant qualify for pension per se. This interpretation is bolstered by logic, reason and common sense. ...”

14. This decision was affirmed in the case of M/o Finance through Secretary, etc. v. Syed Afroz Akhtar Rizvi & others (2021 SCMR 1546) wherein it has been observed that:-

“6.An analysis of the said provisions and judgments of this Court more specifically a relatively recent judgment of this Court in Shah Jahan Shah’s case shows that the following general principles apply to employees who have worked against contractual posts which were subsequently converted into regular posts for the purpose of grant and calculation of pension;

I. an employee who was employed on contractual basis and is subsequently regularized may be entitled to pensionary benefits provided;

- i) he is eligible for pension having served for the qualifying period (10 years) as a regular employee.
- ii) for the purpose of calculating pensionary benefits his service as a contractual employee can be factored in to provide him any financial benefit that may be due to him.
- iii) the period spent in employment as a contractual employee and as a regular employee cannot be aggregated in order to determine his eligibility for entitlement to pension.
- iv) eligibility to receive pension is directly related to rendering qualifying service as a regular employee. Unless an employee has performed services in a regular appointment for the duration of the qualifying period (10 years), he is not entitled to receive pension”.

Thus, the law is clear that the contractual period, being temporary service, is recognized by Article 371-A of the CSR for inclusion in the calculation of pension provided that the contractual period is followed by regularization or confirmation without any gap or interruption, in accordance with clause (ii) of Article 371-A of the CSR.”

4. Learned counsel for the Petitioner submitted with reference to the aforementioned line of caselaw emanating from the Supreme Court that the Petitioners were similarly entitled to have their contractual period of service factored in for purpose of calculation of their pensionary benefits, whereas the learned AAG sought to distinguish and oppose their claim by arguing that those cases concerned parties who were in employment of the Federation and were governed under Regulation 371-A of the CSR, which was not applicable to the Petitioners, who were retired employees of the Provincial Government.

5. However, as it transpires, Regulation 371-A of the CSR and Rule 2.3 (i) of the West Pakistan Civil Services Pension Rules are *in pari materia*, with the latter providing as follows:

“2.3 Temporary and officiating service –
Temporary and officiating service shall count for pension as indicated below: -

 - (i) Government servants borne on temporary establishment who have rendered more than five years continuous temporary service shall count such service for the purpose of pension or gratuity; and
 - (ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity.”

6. Furthermore, the principle laid down by the Honourable Supreme Court in the cited judgments has been followed by learned Division Bench of this Court in C. P No. D-320/2021, relating to a similar pensionary claim falling under the Provincial domain.

7. Under the given circumstances, where it is apparent that the Petitioners qualify for payment of pension independent of their contractual periods of service, having completed put in relevant period, the principle laid down in the aforementioned cases appears to be squarely attracted, with the Petition thus being allowed and the Respondents being directed to recalculate the pensionary dues/benefits of each of the Petitioners accordingly and settle the same without further delay.

JUDGE

JUDGE

MUBASHIR