

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
C.P No.D-1705 of 2024

Date	Order with signature of Judge
1.	For orders on office objections
2.	For hearing of CMA No.6544/2024
3.	For hearing of main case.

19.08.2026

M/s. Malik Naeem Iqbal, Advocate for the Petitioners
Mr. Humayoon Shaikh, Advocate for Respondents/ NHA
Mr. Ashfaq Ahmed Jatui, Assistant Attorney General

Mohammad Osman Ali Hadi, J: Through the instant Petition, the Petitioners have challenged the Letter dated 11.10.2024 (impugned herein),¹ issued by Respondent No. 2, in which the Petitioners have been asked to give a written test (for their post within Respondent No. 2) pursuant to a Judgment dated 17.12.2021 passed by the Supreme Court of Pakistan in Civil Review Petitions No. 292-302 of 2021 (hereinafter referred to as the **“Review Judgement”**).

2. The Petitioners being aggrieved by the Impugned Letter have approached this Court seeking *inter alia* for it to be set-aside and declared void.

3. Learned Counsel for the Petitioners commenced his arguments by submitting the Petitioners were initially appointed in the employment of Respondent No. 2 (**“NHA”**) on a contractual basis, on 08.05.1996. He next contended that they were terminated (as contract employees) on 27.11.1996.² Subsequently, the Sacked Employees Reinstatement Act 2010 (**“SERA”**) was passed, whereby certain persons belonging to services of a Corporation / Autonomous / Semi-Autonomous Body in Government service who were previously relieved of their jobs were to be reinstated.

4. Counsel for the Petitioners submitted that through SERA, the Petitioners were reinstated with Respondent No. 2 and continued their services. Subsequently, the case of *Muhammad Afzal vs. Secretary Establishment Division*³ was decided (hereinafter referred to as **“the 1st Judgement”**), and the said Act, i.e. **“SERA”** was struck down and declared void by the Supreme Court of Pakistan.

¹ Letter dated 11.10.2024, available at page-23 of the File

² Termination Order is available at page-101 of the File

³ 2021 SCMR 1569

5. A series of Review Petitions were filed against the 1st Judgement, which were decided vide Judgment dated 17.12.2021 (i.e. the “**Review Judgement**”),⁴ and the same were dismissed. However, the following observations were passed by the Supreme Court in the Review Judgement:

“We convert these review proceedings filed under Article 188 of the Constitution into proceedings under Article 184(3) read with Article 187 ibid to grant the following relief to the beneficiary employees:

i. Following the principle set out in Muhammad Akram Vs. Registrar, Islamabad High Court (PLD 2016 SC 961) at para 79 [we note that this judgment was subsequently overruled in Gul Taiṣ Khan Marwat Vs. Registrar, Peshawar High Court (PLD 2021 SC 391), however, that declaration was only to the extent that the administrative orders of a Chief Justice of a High Court are not amenable to writ jurisdiction), we hold that the beneficiary employees who were holding posts for which no aptitude, scholastic or skill test was required at the time of initial termination (01.11.1996 to 12.10.1999) shall be restored to the same posts they were holding when they were terminated by the judgment under review; (emphasis added)

ii. All other beneficiary employees who were holding posts on their initial termination (01.11.1996 to 12.10.1999) which required the passing of an aptitude, scholastic or skill test shall be restored to the posts, on the same terms and conditions, they were occupying on the date of their initial termination. However, to remain appointed on these posts and to uphold the cherished principles of merit, non-discrimination, transparency and fairness expected in the process of appointment to public institutions these beneficiary employees shall have to undergo the relevant test, applicable to their posts, conducted by the Federal Public Service Commission within 3 months from the date of receipt of this judgment;

iii. The improvement in the terms and conditions of service of all the beneficiary employees shall be granted strictly in accordance with the applicable laws, rules and regulations; and

iv. The relief granted in sub-paragraphs (i) and (ii) shall not be granted to those beneficiary employees whose initial termination of service (01.11.1996 to 12.10.1999) was on grounds of absence from duty, misconduct, corruption, misappropriation of money/stock or unfitness on medical grounds if such termination was not set aside finally by a court of law.”

6. Learned Counsel for the Petitioners has submitted that the instant Petitioners were regularized in the year 2011, and that they are not required to undergo any re-testing as has been directed in **Para ‘ii’** of the conclusion portion of the Review Judgment (*supra*). Counsel avers that the Petitioners were contractual employees working at Respondent No. 2, from where they were terminated but were subsequently reinstated.

⁴ Judgment dated 17.12.2021 available at page-159 of the File

7. He further continued that Respondent No. 2, i.e. National Highway Authority (“**NHA**”) had promulgated Service Rules in the year 1995,⁵ which were applicable to the Petitioners, and Rule No. 37(2) included *contractual employees* to be bound by the Rules to the extent of the terms of their contract. He relied upon Minutes of Meeting held on 02.02.2023,⁶ specifically the Decision passed under Clause 4.9, which states that the Respondent No. 2’s Executive Board had allowed appointment of persons having a contractual nexus with Respondent No. 2 to be appointed without any testing. Counsel contends that such Decision is binding and therefore the Petitioners (being contractual appointees at such time) would be exempt from being tested, in line with the said Decision.

8. Counsel for the Petitioners then referred to section 5 of the National Highway Authority Act 1991⁷ (“**NHA Act**”) and submitted that it is the National Highway Council (“**NHC**”) created under section 5 of the NHA Act, who are the proper authority / in-charge of criterion and appointments in the NHA, and stated that the said Minutes of Meeting dated 02.02.2023 (*previously referred*) were passed upon a Decision of the NHC, which could not be discarded. He concluded his arguments by stating that the directions given in the Review Judgment by the Supreme Court specified that persons must be restored to their positions on the date of their initial termination and on the same terms and conditions which stood at such time; which, in the case of the Petitioners would hold that being *contractual employees* at such time, they were not susceptible for any further written testing, and that they should be allowed to continue with their employment in Respondent No.2 on an as-is basis without having to give the written test mentioned in the Impugned Letter.

9. Learned Counsel for the Respondents vehemently opposed the contentions of the Petitioners, and at the outset has challenged the maintainability of the instant Petition. He submits that the Petitioners were *contract employees* and therefore the principle of *master & servant* would apply, which could not be assailed in a Constitutional Petition. He does

⁵ Available at page-281 of the File

⁶ Available at page-309-311 of the File

⁷ National Highway Authority Act, 1991

however acknowledge that currently the Petitioners are regularized, and refers to Rules 9 - 12 of the National Highway Authorities Service Rules (“**NHA Rules**”),⁸ which he says governs appointment and promotion of Respondent No. 2 employees, and that it remains the prerogative of Respondent No. 2 to apply written testing and/or any other mechanism which they feel is required to show the competency of a person to be appointed / remain at a certain positions within the NHA.

10. Counsel next referred to an Office Memorandum issued by Respondent No. 1 dated 29.10.2025,⁹ which clearly emphasized that regularization of contractual officers in the ‘Khursheed Ahmed Shah Committee’ had been declared void ab-initio, and such contractual employees could not be treated as regular employees, and even on this account the Petitioners lack any *locus standi* to file the instant Petition. He averred that accordingly the instant Petition was required to be dismissed.

11. Learned Assistant Attorney General adopted the arguments of the Respondents’ Counsel and simply referred to the Supreme Court’s Review Judgment and asserted that this Petition is not maintainable and liable to be dismissed.

12. Counsel for the Petitioners utilized his right of rebuttal and retorted that at the time of the Petitioners’ initial termination, i.e. 27.11.1996, the Petitioners were *contractual employees* who were regularized later on 15.01.2011, and since the Review Judgment came out on 17.12.2021, at such time the Petitioners had already been regularized, and therefore they ought to be treated as *regularized employees*. He contended that this ground makes the instant Petition maintainable. He further clarified that the Petitioners fall into the Category “**i**” of the concluding portion of the Review Judgment, where no test was required at the time of their initial termination, and therefore to make the Petitioners take a test at this belated stage is in derogation of their fundamental rights. He asserted that now imposing such a condition is contrary to the directions given by the Supreme Court in the Review Judgment, and prays that this Petition may be allowed.

⁸ Available at page-281 of the File

⁹ Filed along with Respondents’ statement dated 24.11.2025

13. We have heard learned Counsels and have gone through the material on record, following which we opine as under:

- A. The main gist of the Petitioners' argument is that they seek implementation of **Clause 'i'**¹⁰ of the concluding Para of the Review Judgment dated 17.12.2021 passed by the Supreme Court, which would restore them to the same terms and conditions under which they were employed by the NHA at the time of their initial termination, which (according to the Petitioners) renders them immune from any written testing.
- B. However, a perusal of the concluding portion of the Review Judgment, irrespective of whether **Clause 'i'** or **Clause 'ii'** is read, clearly direct that restoration is to be given to the same post the person was holding at the time of their termination.
- C. In fact, the Review Judgment even specifies the time-period of termination being between the years 01.11.1996 to 12.10.1999. Since the Petitioners state they were terminated on 27.11.1996, i.e. within the stipulated timeline, they would go back to their initial positions at the time of termination, which (as admitted by the Petitioners themselves throughout their Petition) would hold them as *contractual employees*.¹¹ Prayer Clause (i) of the Memo of Petition is relevant, which reads:

“Declare that the impugned letter dated 11.10.2024 for holding of written test of petitioners who were holding contract appointment against project posts at the time of initial termination, is unlawful, illegal, unjust, arbitrary discriminatory, unconstitutional and based upon mis-interpretation of the judgement of Supreme Court of Pakistan dated 17.12.2021 and set-aside the same”. (emphasis supplied)

- D. In addition to the above **Prayer Clause 'i'**, throughout the Memo of Petition, including a perusal of **Para 6 & Grounds 'B', 'C' &**

¹⁰ Contrarily counsel for the Respondents stated that Clause 'ii' of the concluding portion in the Review Judgement was the applicable Clause.

¹¹ Reference is made of Para Nos.3 & 5; Ground (B), (C), (D) and Prayer Clause (i) of the Memo of Petition

‘D’, clearly shows the Petitioner is placing their reliance for exemption from testing upon being *contractual employees*.

- E. We however find that since the Petitioners were in a *contractual employment* relationship with the NHA / Respondent No. 2 at the time of their initial termination, therefore the directions given in the Review Judgment,¹² would restore the Petitioners to the same position, i.e. as *contractual employees*, which would render them to be susceptible to the principles of *master & servant*, and would close the door for invoking the Constitutional Jurisdiction of this Court.
- F. It is trite law that enforcement of contracts by employees cannot be entertained in constitutional petitions (except under very rare and exceptional circumstances, which is not the case pleaded before us). We are fortified in our view by the judgement of the Supreme Court in the case of *Bacha Khan University Charsadda v Tanveer Ahmad & Ors.*¹³ whereby it was held:

“Further, it is not for the courts to decide for employers how and when and on what terms and conditions an employee is to be hired. It is the prerogative of the employer to decide such matters and the terms and conditions of such employment are such as are incorporated in the employment contract. The relationship is governed by the principle of master and servant and except in exceptional circumstances; disputes arising there from are beyond the jurisdiction and parameters of the courts under Article 199 of the Constitution of the Islamic Republic of Pakistan.”

- G. The above view has long appeared in our jurisprudence. In the prior case of *Qazi Munir Ahmed v Rawalpindi Medical College*¹⁴ another three Member Bench of the Supreme Court stated:

“12. We have also noticed that the dispute between the parties related to contract employment. This Court has in various pronouncements settled the law that a contract employee is debarred from approaching the High Court in its constitutional jurisdiction. The only remedy

¹² At Para 41 ‘i’ @ pg. 217 of the File

¹³ 2022 PLC (C.S.) 85

¹⁴ 2019 SCMR 648

available to a contract employee is to file a suit for damages alleging breach of contract or failure to extend the contract.”

- H. Therefore, being both bolstered and bound by precedent, we find on this account the Petitioners’ reliance upon the Review Judgement is misdirected, as the Petitioners self-admittedly fall within the category of *contractual employees*, which actually works to their detriment towards the competence of filing this Constitutional Petition.
- I. Even if the alternative view taken by the Petitioners was considered, i.e. that they were *regularized* at the time the Review Judgement was passed and hence were to be considered as ‘*regularized employees*’¹⁵, the same would also be a self-defeating argument. On the one hand the Petitioners have tried to seek refuge against the bar from approaching this Court under Article 212 of the Constitution of Pakistan 1973 by shielding themselves as being *contractual employees*; whilst at the same time they have taken a directly contrary stance by arguing they were *regularized employees*. This blowing of hot and cold is disadvantageous to the Petitioners’ case, and their arguments on both fronts are negated (for further reasons explained below).
- J. The Petitioners had contended that the NHA Service Rules 1995 were applicable to them, and hence this Petition was maintainable (since the said Rules were statutory in nature). In support of this contention, learned Counsel for the Petitioners had referred to Rule 37(2), which reads:

Conditions of Services, of Deputationists, Contract Employees, Workcharge Employees, Trainees and Apprentices will be governed as follows:

(1) Terms and Conditions of services of all deputationists from Government/ Autonomous/ Semi-Autonomous Organizations, will be determined by mutual agreement of the Authority and of the lending Organization.

(2) Contract employees with whom specific contracts of employments have been executed will be bound by these Rules to the extent of the terms of their contracts. (emphasis supplied)

¹⁵ Which view is not endorsed by us and as it is contrary to their position in the Memo of Petition where they have specifically stated in their Prayer Clause that they were ‘contract appointments’.

(3) A trainee/apprentice will be paid stipend or a fixed pay during the period of training. He will not be considered an employee of the Authority on successful completion of his training.

K. Counsel for the Petitioner relied upon Clause (2) *supra*. But we find this to be misconceived and a last gasp effort by the Petitioner. A perusal of the Memo of Petition, particularly ‘**Ground B**’¹⁶ shows the Petitioners clearly denying the NHA Rules are applicable to them. This again is a contradiction by the Petitioners, which does not assist their cause.

L. Even otherwise, the said Clause 37(2) relates to general guidelines, and does not hold the power to convert *contractual employees* to *regularized employees*. If this plea were to be considered in the manner submitted by the Petitioners it would open a pandoras box, since it would in essence then be possible to *regularize* the *contractual employees* bypassing the vigour and testing that *regularized employees* have had to endure to reach their positions. This is not only impermissible under law, but has long been settled by the Supreme Court, ironically also in the *Muhammad Afzal* case (*supra*) (i.e. the 1st Judgement), as well as in the more recent case of *Mohsin Raza Gondal*¹⁷ where the Court held:

“14. Even otherwise, any institution opting for regularization of its employees must be either mandated by law or must carry out regularization through a well-thought-out policy of the institution concerned laying down the criteria and the process for regularization; performance evaluation of the contractual employee must be assessed to determine if the employee meets the standards required for a regular position; there must be availability of positions that match the skills and experience of the contractual employee; the budgetary considerations and financial implication of a regular employee be weighed and considered. There must be a fair assessment of the employee's qualifications, performance and merit, so as to ensure only competent and committed employees be granted permanent employment status. Reference in this regard may be made to the cases of Federation of Pakistan through Secretary, Ministry of Law and Justice

¹⁶ @pg. 11 of the File

¹⁷ 2025 SCMR 104

Islamabad and another v. Fazal-e-Subhan and others (PLD 2024 SC 515); Government of Khyber Pakhtunkhwa through Secretary Forest, Peshawar and others v. Sher Aman and others (2022 SCMR 406); and Messrs State Oil Company Limited v. Bakht Siddique and others (2018 SCMR 1181). In the instant case, the regularization process of the petitioners lacks the backing of law, rules, or policy. In the absence of any of the same, an employee cannot claim regularization.”

M. Had the Petitioners observed section 13(3) of the National Highway Authority Act 1991 (which Act of course supersedes the Rules), it states any person holding a post under the Authority shall be deemed to be a ‘Civil Servant’. So if the Petitioners’ alternative stance was accepted and their claim to now be *regularized employees* holding a post with the Authority was considered,¹⁸ they would be amenable to be treated as *regularized employees* for the purposes of this Petition, and then the Constitutional Jurisdiction of this Court would (still) be barred for them, as per Articles 212 & 240 r/w 175(2) of the Constitution of Pakistan 1973, which would require the Petitioners to seek their remedy under the Services Tribunal Act 1973 (and not before this Court).

N. For reasons afore-stated, we find this Petition to be entirely full of contradictions and surmises, and without proper substance. On the one hand the Petitioners have filed the Petition seeking respite as *contractual employees*; whereas on the other hand their oral arguments altered to being premised on the basis of *regularized employees* and having the NHA Rules and Act applicable to them, which are two directly contrary positions; and in both instances the Constitutional Jurisdiction of this Court would not be the appropriate forum.

O. The Petitioners have repeatedly changed their submissions, deviating from the contents of their Memo of Petition when presenting their legal arguments before the Court, which we find

¹⁸ Through Rule 37(2) or otherwise

were all done in an effort to defeat the legal bar / impediments present when they approached this Court.

P. Therefore, this Petition being devoid of any legal merit is dismissed accordingly.

Petition dismissed

JUDGE

JUDGE

Faisal Mumtaz/PS