

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitutional Petition No. D-1805 of 2024
[Mst. Ghulam Sakina vs. Province of Sindh and others]

Before:-

Mr. Justice Amjad Ali Bohio,
Mr. Justice Ali Haider 'Ada'.

Petitioner : Mst. Ghulam Sakina,
through Mr. Abdul Naeem Pirzada,
Advocate.

Respondents : Province of Sindh and others,
through Mr. Ali Raza Balouch,
Additional Advocate General.

Date of Hearing : 11.03.2026.

Date of Decision : 01.04.2026.

ORDER

ALI HAIDER 'ADA' J; The petitioner was appointed as a Lady Health Worker on 15.08.1996 on a contractual basis. The matter concerning the regularization of Lady Health Workers remained subjudice and was ultimately adjudicated by the Supreme Court of Pakistan, pursuant to which they were regularized with effect from 01.07.2012. Following her regularization, the petitioner retired from service on 15.03.2019.

2. Upon claiming her pensionary benefits, the Health Department, Government of Sindh, declined the same based on Circular bearing No. SO (PM-II) / Condonation-15/2022, dated 07.04.2022, (**Circular**), whereby it was stipulated that pensionary benefits of Lady Health Workers would accrue only after completion of ten years from the date of regularization, i.e., 01.07.2022, in terms of the decision of the Council of Common Interests, and that the contractual period of service would not be counted for such purposes. Consequently, the instant petition has been filed.

3. Learned counsel for the petitioner contended that the petitioner, along with other Lady Health Workers, was regularized after an inordinate delay of approximately sixteen years by virtue of the orders of the Supreme Court of Pakistan, and that any internal circular cannot operate to deprive the petitioner of her vested right to pension. It was further argued that, under settled law, pensionary benefits are to be computed based on uninterrupted government service, including contractual or temporary service. In support of his contentions, reliance was placed upon the judgments in *Chairman Pakistan Railway, Government of Pakistan, and others v. Shah Jehan Shah* (PLD 2016 SC 534) and *Messrs State Oil Company Limited v. Bakht Siddique and others* (2018 SCMR 1181).

4. Conversely, the learned Additional Advocate General submitted that, at the time of regularization, the Supreme Court of Pakistan had imposed a restriction regarding pensionary benefits, and in compliance thereof, as well as pursuant to the decision of the Council of Common Interests, the aforementioned circular was issued. It was argued that the petitioner is not entitled to the relief claimed. It was further contended that the petitioner was fully aware that her service would be reckoned from the date of regularization, yet she remained silent during her service tenure and only approached this Court after retirement. Reliance was placed upon the judgment of this Court, Circuit Court at Larkana, in *Mst. Islam Khatoon v. P.O. Sindh and others* (C.P. No. D-555 of 2021).

5. Heard the learned counsel for the parties and perused the record as well as the relevant laws.

6. It is an admitted position that the petitioner was appointed as a Lady Health Worker in the year 1996. Subsequently, pursuant to a series of orders passed by the Supreme Court of Pakistan, the case of the Lady Health Workers was taken up for consideration regarding their regularization. In this context, it is imperative to first peruse the relevant orders passed by the august Court.

7. It is an admitted position that the petitioner was appointed as a Lady Health Worker in 1996. Thereafter, pursuant to a series of orders passed by the Supreme Court of Pakistan in **C.R.L.O. No. 15 of 2012, arising out of H.R.C. No. 16360 of 2009 and Constitution Petition No. 36 of 2012**, the matter of regularization of Lady Health Workers was taken up. It is, therefore, necessary to reproduce the relevant paragraph No. 2 said order dated 01.01.2013:

We have pointed out to the learned DAG that in view of the earlier commitment made before this Court, the staff of the Primary Health Care Programme, were required to be regularized w.e.f. 1.7.2012 but now in view of the above position their regularization shall take place w.e.f. 1.7.2013. Under the circumstances, we direct the Secretary, Ministry of Inter-Provincial Coordination that the matter should be again taken up in view of the earlier commitment made by the Federal Government to ensure that their regularization shall take place w.e.f. 1.7.2012 and similarly the Federal Government shall ensure that the Provincial Governments also accept such regularization. The matter is lingering on for a considerable period, therefore, it is ordered that the same be expedited and concluded as early as possible. Adjourned to 23.1.2013.

8. In the said order, the Supreme Court of Pakistan observed that, in view of the commitment made, the staff was required to be regularized, and accordingly directed the Secretary, Ministry of Inter-Provincial Coordination, to take up the matter. Subsequently, vide order dated 18.02.2013, the Supreme Court of Pakistan further observed that the Provincial Governments of Punjab, Khyber Pakhtunkhwa, Sindh, and Balochistan were directed to do the needful, as the Federal Government had already made a decision in this regard. The relevant portion is reproduced hereunder:

It is Informed that the Chief Commissioner, ICT, vide Notification dated 31.01.2013 has regularized the Lady Health Supervisors, Lady Health Workers, Drivers and I'MU Staff with effect from 1st July, 2012. As far as the Provincial Governments are concerned, they have not Implemented the decision of the Federal Government as so far notifications have not been issued by the respective Provincial Governments as per the decision of the Council of Common Interest (CCI), although in the meeting, which was attended

by the high-ups in principle, they have agreed to issue the notifications regarding the regularization of the Lady Health Supervisors, Lady Health Workers, Drivers and PMU Staff with effect from 1st July, 2012. The Provincial Governments of the Punjab, KPK, Sindh and Baluchistan are directed to do the needful on or before 25.02.2013 and the matter shall be reported to the Registrar of this Court for our perusal, no sooner such notifications are issued. The cases are adjourned to be fixed in the week commencing from 4th March, 2013.

9. On 07.03.2013, the Supreme Court of Pakistan disposed of the aforementioned proceedings with the following directions. The same is of considerable importance for a proper appreciation and adjudication of the present case, and is reproduced hereunder:

3. We may point out here that Initially the Lady Health Workers etc., had no permanent status and through the Intervention of this Court, followed by the decision of Special Committee and Council of Common Interests noted hereinabove and also the deliberations, which took place between the Federal and the Provincial Governments for the first time, the petitioner's status has been recognized along with pay scale, etc. Pensionary benefits have to be decided by the Provinces, therefore, they need legislation or to follow Rule if already existing on the subject but it would take some time. However, we may observe that in view of the services of Lady Health Workers, etc. which they are rendering for the last many years, we hereby direct that no adverse decision contrary to their interest according to the Constitution and the law shall be taken by the Federal or any of the Provincial Government, ICT or FATA Administration. All efforts must be made to protect their rights, subject to the observation made hereinabove.

4. Thus, for the time being, all the instant petitions are disposed of accordingly.

10. A plain reading of the final verdict rendered by the Supreme Court of Pakistan at the time of disposal of the proceedings makes it evident that no unfettered discretion was conferred upon the Provincial Governments to independently determine the issue of pensionary benefits at their own whims. Rather, the observations of the august Court were explicit to the effect that the matter of pensionary benefits was to be regulated either through appropriate legislation or in accordance with the existing rules, if any, though

such a process might require some time. Furthermore, the Supreme Court of Pakistan categorically directed that no adverse decision, prejudicial to the interests of employees who had rendered services for a considerable period, should be taken except strictly in accordance with the Constitution and the law, and that all possible efforts be made to safeguard and protect their rights.

11. In this backdrop, it is manifestly clear that the circular, purportedly based upon the binding decision of the Supreme Court of Pakistan, does not draw any support from the said judgment, since there is no observation or direction therein to the effect that pensionary benefits shall be computed only from the date of regularization. On the contrary, the tenor of the judgment reflects that the interests of the employees were to be given primacy and their rights duly protected, either by framing appropriate legislation or by adhering to the existing statutory framework.

12. It is also pertinent to note that the Deputy Director General (RMNCH), Directorate General Health Services, Sindh, in his para-wise comments, has placed reliance upon a **Decision dated 23.01.2013** passed by the Council of Common Interests in Case No. CCI.2/1/2013, about the regularization of Lady Health Workers. The said decision is reproduced hereunder:

DECISION

*The Council of Common Interests considered the Summary dated January 17, 2013 submitted by Ministry of Inter Provincial Coordination (Secretariat of CCI) on *Regularization of Lady Health Workers etc and decided that Federal Government will keep on financing the LHWs Program till June 30, 2017, **Pension liability which will accrue after ten years from the date of regularization i.e. June 30, 2022 will be settled in a separate meeting.** The Council also directed to provincial governments to finalize the necessary legislation regarding their service structure and terms and conditions etc; as soon as possible keeping continuity of the spirit of original scheme In view.*
(Bold version applied)

13. The Council of Common Interests, by virtue of the aforesaid decision, had merely directed the Provincial Governments to finalize the necessary legislation with regard to the service structure, terms and conditions, and pensionary benefits, and further provided that the issue of counting service for pension purposes from the date of regularization be placed for consideration in the subsequent session/meeting.

14. In furtherance thereof, the Health Department, Government of Sindh, issued the **Circular** (*supra*), wherein para No. vi, based upon the decision of the Council of Common Interests dated 23.01.2013, stipulates that the pensionary benefits of Lady Health Workers shall accrue after completion of ten (10) years from the date of regularization, i.e., 01.07.2022. For the sake of clarity, the said circular is reproduced hereunder:"

CIRCULAR

In pursuance to the order of the Supreme Court of Pakistan passed in Crl. Original Petition No.15 of 2012 in HRC No.16360/2009. Constitution Petition No.56 of 2012 and Crl. Original Petition No.73 of 2012 and in HRC No.16360/2009. This department has issued an "ORDER" doled 24-02-2013. (Copy Enclosed)

02. However, despite clear order the subordinate offices are violation the orders of Honourable Court of Pakistan and of this Department.

03. In this regard, it is once again circulated for clear directions and compliance that:

i). Upon regularization, the following staff shall be placed of the basic scale given below:-

- a). Lady Health Supervisor In (BPS-07)*
- b). Accounts Supervisors in (BPS-07)*
- c). Lady Health Worker in (BPS:05)*
- d). Drivers in (BPS-04)*

ii). The staff of the National Programme for Family Planning & PHC Sindh, so regularized shall have no pension benefits. The issue of the pension shall be considered after a firm commitment from the Federal Government to lake up in perpetuity, the financing liability of The staff, so regularized.

iii). *All Financial implications including arrears of regularized staff which includes the salary component with all allowance operational cost and of medicines will be borne by the Federal Government from the date of regularization i.e. 01-07-2012 to 30-06-2017 the next NFC award.*

iv). *The staff regularization would be without pension liability and The issue of pension will be subject to decision & firm commitment, of federal government to take-up in pterpetuit the financing liability on account on account of the staff. So regularized.*

v). *The pension liability will accrue / after ten (10) years from the date of regularization i.e. 01-07-2022 as per decision of counsel of Common interests meeting dated 23-01-2013 vide letter No.2(38) /2012-CCI dated 30-01-2013 of Ministry of Inter Provincial Coordination (IPC)Division/Secretarial of Council of common interests.*

vi). *The regularization shall be subject to the revised terms and conditions and organizational structure which the Government shall firm-up keeping in view fact that the basic design of the Program is not subsequently compromised or altered.*

04. *This issues with the approval of Secretary Health on para-57 of file No.SO(PM-II) Condonation-5/2022 dated 25-03-2022.*

No.SO(PM-II)/Condonation-15/2022

Karachi, dated 07th April,
2022

SECRETARY TO GOVT. OF SINDH
HEALTH DEPARTMENT
(Bold version applied)

15. Before examining the method adopted by the respondents, it is pertinent to note that circular has been affirmed to have been issued in pursuance of the decision of the Council of Common Interests dated 23.01.2013; however, a careful reading of the said decision does not reveal any direction to the effect that pensionary benefits shall be computed from the date of regularization. On the contrary, the matter was left to be settled in the subsequent session /meeting for further consideration and appropriate determination

16. The next question which arises for consideration is whether the law provides any mechanism in this regard, and what the applicable legal framework stipulates, and further, why the Government, instead of adhering to the existing statutory regime, proceeded to issue the circular. In this context, it is pertinent to observe that the subject pertaining to the computation of qualifying service for pension is already governed under the existing legal framework, and the relevant rules adequately provide the mechanism for the determination of pensionable service. Consequently, where such a legal understanding is already in the field, recourse ought to have been made thereto instead of introducing a departure through executive instructions in the form of the circular.

17. In this aspect, the **West Pakistan Civil Services Pension Rules, 1963, under Chapter II titled "Service Qualifying for Pension,"** lay down the parameters and conditions for qualifying service of an employee. For ready reference, the relevant Rule 2.1 is reproduced hereunder:

2.1. Conditions of Qualifications. The services of a Government servant does not qualify for pension unless it conforms to the following three conditions: -

First---The service must be under Government.

Second---The service must not be non-pensionable.

Third---The service must be paid by Government from the Provincial Consolidated Fund.

Note (1) For the previous service of displaced Government servants which qualifies for pension see Chapter VII.

Note. (2) Service rendered after retirement on superannuation pension retiring pension shall not count for pension or gratuity.

18. In the same element, **Regulation 361 of the Civil Service Regulations** also prescribes the conditions governing the

qualification of an employee for a pension. For ready reference, the said regulation is reproduced hereunder:

Conditions of Qualification

361. Except as otherwise provided in these Regulations, the service of an officer] does not qualify for pension unless it conforms to the following three conditions: –

First. – The service must be under Government.

Second. – The employment must be substantive and permanent.

Third. – The service must be paid by Government.

19. Moreover, **Rules 2.2 and 2.3 of the West Pakistan Civil Services Pension Rules, 1963**, further clarified the commencement of service and the manner in which such service is to be reckoned for pension. For the sake of clarity, the essence of the said provisions is reproduced hereunder:

2.2. Beginning of Service. - Subject to any special rules, the service of a Government servant begins to qualify for pension when he takes over charge of the post to which he is first appointed.

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

- (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.*

20. Even for the purpose of further elaboration on this aspect, **Regulation 371-A of the Civil Service Regulations** is of considerable relevance and is required to be examined in the present context. The said regulation is reproduced hereunder:

371-A. Notwithstanding anything contained in Articles 34[355(b),]35[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.

21. In addition, the **ESTA Code Edition-2011 (Volume II), Chapter 16** relating to Pension and Gratuity, particularly Serial No. 8, provides comprehensive guidance regarding the manner in which an employee's service is to be calculated for the calculation of pensionary benefits.

Sl. No. 8:

Conditions of Qualifying Service

Unless it be otherwise provided by special rule or contract, the service of an officer begins to qualify for pension from the date he takes charge of the office to which he is first appointed.

[Authority. - Article 358 of the C.S.Rs as introduced vide Finance Division Note No. D.F. 1 (15)-Reg. (6)/72, dated 31-1-1973.]

The service must be under Government. A Government servant does not qualify his service for pension unless he is appointed and his duties and pay are regulated by the Government. (Arts. 361, 362 C.S.Rs).

The employment must be substantive and permanent. (Arts. 361, 368 C.S.Rs).

22. It is further clarified in the **Compendium of Pension Rules and Orders, 2018**, wherein the chapter dealing with the counting of temporary/officiating service for the purpose of pension elaborates the manner in which such service is to be considered. The relevant portion thereof is reproduced hereunder for further elucidation:

S. No. 6. – Under the existing rules temporary and officiating service does not qualify for pension or gratuity unless such service conform to the conditions laid down in Articles 370 and 371 C.S.R. It has now been decided by the Governor General: –

(i) that Government servants borne on temporary establishments who have rendered more than 5 years' continuous temporary service should be allowed to count their entire temporary service for the purpose of pension or

gratuity excluding only broken periods of temporary services, if any, rendered previously; and

(ii) that temporary and officiating service followed by confirmation which does not qualify for pension under the existing rules should also be allowed to count for pension or gratuity subject to the exclusion of the broken periods of temporary or officiating service, if any.

2. The decisions contained in paragraph 1 above shall apply to Government servants who were in service on the 1st January, 1949, or who joined service thereafter.

23. Now, as regards the term "duty" for the purpose of counting service, **Rule 240 of the Sindh Civil Services Rules, Volume I**, provides the relevant determination in this regard. The said rule is reproduced hereunder:

240. The duty performed by -

(1) a Government servant holding a temporary post, from which he is transferred to a permanent post, if the temporary post is subsequently made permanent, or

(2) a Government servant without a substantive post officiating in a permanent post, if such Government servant is confirmed without interruption of his service, or

(3) a probationer who is subsequently confirmed in a permanent post without interruption, or

(4) subject to the provisions of Rule 241, a Government servant in foreign service, in respect of which contribution towards pension has either been paid or remitted under Rule 127, or,

(5) a Government servant retiring on or after 1st April 1954-

(i) in a temporary post continuously for more than five years excluding broken periods of such duty if any, rendered previously, and

(ii) in a temporary capacity followed by confirmation which does not otherwise qualify for pension subject to the exclusion of the broken periods, if any, rendered previously, shall be treated as "duty" for the purposes of Rule 239.

Note 1. Clause (1) of this rule will only apply when the same appointment on the same establishment is transferred from temporary to permanent footing, or when the temporary establishment from which Government servant is transferred to a permanent establishment is made permanent after his

transfer. When separate establishments are necessarily amalgamated into one, the collective duties remaining the same, and there is no formal or conscious transfer from a temporary to a permanent post, a Government servant may count his duty in the temporary post to the extent to which the work rendered in it was of the same general character as the work rendered by him after the amalgamation.

Note 2.- Duty, whether continuous or not, performed by a subordinate Judge of the second class prior to confirmation, shall be treated as duty for the purpose of clause (2) of this rule.

Note 3. Under clause (2) of this rule, officiating service of a Government servant in a permanent post counts as duty, if he is confirmed without interruption. Since service in a temporary post does not constitute an interruption of service under Rule 250, the officiating service in a permanent post counts as duty for pension, even though the Government servant was transferred to temporary post before confirmation, provided that his service was continuous before confirmation.

Note 4. The period spent by lower forest subordinates under training in the Ranger's course should be treated as duty for the purpose of pension.

Note 5. One half of the period of apprenticeship undergone on or after 12th July, 1954 should be treated as duty for the purpose of pension.

24. Now, for the purpose of fortifying the petitioner's stance, reliance is placed upon the judgments of the Superior Courts on the subject. It has consistently been held that service rendered on a contract basis, particularly where employees remain continuously engaged for long periods extending over years and their contracts are renewed or extended from time to time, is liable to be counted towards pensionary benefits. In this regard, reference is made to the case of *Secretary, Ministry of Finance, Islamabad and others versus Tayyaba Halim Subhani and others (2022 SCMR 77)*, wherein the Hon'ble Supreme Court has elaborated upon the said principle. The relevant portion thereof is reproduced hereunder:

13. The learned DAG has argued that the contracts of the Respondents were not renewed/extended, but they were offered new contracts from time to time after their previous

contracts had expired. The record reveals that such breaks were artificial. The said breaks cannot render the employment of the Respondents to be purely temporary. The Respondents have been performing their duties in their respective schools since long and such artificial breaks in their employment do not negate the fact that the Respondents had been continuously serving the Appellants! Petitioners for a long time. Reliance in this regard is placed on the case titled Board of Intermediate and Secondary Education, Multan v. Muhammad Saud (2019 SCMR 233 Supreme Court) wherein it was held as follows:-

"It is an admitted position that the respondents before us have been working with the petitioner-Board since long, however, in their clumsy attempt to break the continuity of their service, the petitioner has been employing them for 89 days only, and has been re-hiring them for the next 89 days, and thus continued to avail their service for a long period by creating artificial breaks in their service period. The fact that they have, in fact, continuously served the petitioner for a long period of time, albeit the breaks created by the petitioner, as noted above, clearly show that they have been performing the job of a permanent nature and have not been serving on casual posts."

25. In the case of ***Muhammad Abbas Halephoto versus Federation of Pakistan through Secretary Finance, Government of Pakistan, Islamabad and another (2025 PLC (C.S.) 1559) (D.B. Sindh)***, the Court directed the respondents to recalculate the petitioner's pensionary benefits by taking into account his prior service. It was held that:

13. *To add further, Article 371-A of Civil Service Regulations is clear in its terms that a government servant not employed in a substantive permanent capacity who has rendered more than five years continuous temporary service counts such service for pension or gratuity, excluding the broken period of service, if any, rendered previously. Continuous temporary and officiating service of less than five services immediately followed by confirmation shall also count for gratuity or pension, as the case may be. On the aforesaid proposition we are guided by the decision of the Supreme Court in the case reported (2021 SCMR 1546).*

14. *In view of the foregoing legal position of the case, the petitioner is entitled to claim the entire service/pensionary dues by counting his previous service, rendered in the*

district judiciary, to his retirement benefits. Even otherwise, under Section 474 (b) of CSR petitioner's case is fully covered under the aforesaid regulation. We are guided by the decisions of the Supreme Court in the cases of Nafees Ahmad v. Government of Pakistan and others, 2000 SCMR 1864, Ch. Muhammad Azim v. The Chief Engineer, Irrigation and others, 1991 SCMR 255, and Chairman, Central Board of Revenue and others v. Nawab Khan and others, 2010 SCMR 1399.

15. In accordance with the terms outlined above, this petition is hereby disposed of. The respondent Bank is directed to recalculate the petitioner's pension benefits, taking into account his prior service within the judicial district from 1979 to 1984. The recalculated benefits shall be disbursed to him according to his legal and SBP policy entitlements within a period of three months. A copy of this order shall be sent to the Governor of the State Bank of Pakistan for compliance.

26. Support is also drawn from the case of ***Chairman/Dean Sheikh Zayed Hospital, Lahore versus Amjad Mehmood Khan (2025 SCMR 168)***, wherein the Hon'ble Supreme Court observed that a careful perusal of Article 371-A of the Civil Service Regulations reveals that clause (i) stipulates that government servants employed in temporary positions who have rendered more than five years of continuous temporary service are entitled to have such service counted towards pension or gratuity. The use of the term "continuous" clearly indicates that only uninterrupted service exceeding five years qualifies for such a benefit, whereas any prior broken periods of temporary service are to be excluded from the computation. The relevant portion is reproduced hereunder:

10. The perusal of the Article 371-A of CSR reveals that clause (i) stipulates that government servants employed in temporary positions who have rendered more than five years of continuous temporary service are entitled to have such service counted towards their pension or gratuity. The use of the term "continuous" indicates that only uninterrupted service exceeding five years qualifies, and any prior broken periods of temporary service are to be excluded from the calculation.

27. It is a well-settled principle of law that executive instructions, circulars, and administrative directives cannot override, amend, or

curtail the scope of a statute or the rules framed thereunder. Such executive clarifications have no statutory force where they are inconsistent with the governing law. Pension rights, being in the nature of a legal and protected entitlement, cannot be denied or restricted merely on the basis of departmental policy or circulars, and any such denial must be founded upon a clear legal provision rather than executive instructions. **Support is drawn from the case of PROVINCE OF SINDH through Secretary, Government of Sindh, Karachi and others Versus Mst. SORATH FATIMA and another PLD 2025 Supreme Court 856**, as it was held that:

8. It is settled law that executive clarifications in the form of circulars and administrative directives cannot override, amend or curtail the scope of the statute itself or the rules framed thereunder. In the present case, the Circular modifies Rule 4.10 by imposing a condition which is not authorized by the Act of 1973 or the Rules. Consequently, two distinct issues arise. The first being that the point in time restriction further limits eligibility to family pension with no statutory backing because the Rules grant family pension to unmarried daughters and to divorced daughters, the distinction between the two being technical, possibly to avoid confusion, however the basic issue being that the Rules do not condition this right with the status at a given point in time requirement. The Circular places an onerous burden on the unmarried or divorced daughters' right which is beyond the scope of the Act of 1973 and the Rules. The same will apply to the widowed daughter, who as per the Circular, is only entitled to family pension if she was widowed before the pensioners death and not after. The second issue is that the Finance Department has transgressed its authority by issuing a clarification where none was required. It has in fact no authority to issue such a clarification and impose conditions on the grant of pension which are not in the Act of 1973 and the Rules which it seeks to clarify. A similar transgression was in issue in the Kanwal Rashid case where this Court affirmed that family pension rights are an extension of the right to life under Article 9 of the Constitution and that any denial of such rights must have a legal basis, not a departmental policy or a circular⁹. While administrative orders or executive instructions may fill in procedural details, they cannot nullify, override or contradict the Rules framed under the parent statute.¹⁰ Consequently, the Finance Department could not impose conditions on who qualifies for family pension, and it cannot restrict or exclude persons from a right given under the law by imposing conditions which are not envisioned under the

statute or rules. It has been held by this Court time and again that pension is a legal right and not a favour or benefit that can be changed at will. Furthermore, the right to pension has a constitutional underpinning being the fundamental right to life and dignity.¹¹We are dismayed to note that, despite this Court having repeatedly clarified the legal position, the law continues to be disregarded.

28. Even otherwise, it has been consistently held that circulars and administrative instructions cannot override the interpretation of law laid down by Superior Courts. Reliance in this regard may be placed on **2001 PTD 1127, wherein, while referring to the judgment of the Supreme Court of India in *Hindustan Aeronautics Ltd. v. Commissioner of Income Tax (243 ITR 808)***, it was observed that circulars cannot prevail against the view taken by the High Court or the Supreme Court.

29. The contention that the petitioner failed to assert her right at the time of issuance of the circular carries no legal weight, as accrued rights are protected under the doctrine of vested rights. It is further well-settled that principles of natural justice are inherent in all administrative and quasi-judicial actions unless expressly excluded by law, requiring fairness, reasoned decision-making, and lawful basis for any adverse action. Authorities are bound to act fairly and judiciously while safeguarding legal and constitutional rights. This principle is fortified by the judgment in *Inspector General of Police, Quetta and another v. Fida Muhammad and others (2022 SCMR 1583)*. The maxim **ubi jus ibi remedium also applies, meaning where there is a right, there is a remedy.**

30. In this regard, reliance could be placed upon **Muhammad Yousaf v. Province of Sindh and others (2024 SCMR 1689)**, wherein it has been held that the pension is a vested right and not charity, alms or donation by the employer but a compensation of services rendered assiduously by giving blood, sweat, toil and tears.

31. The very foundation of justice is reflected in the maxim *fiat justitiam ut caelum*, meaning 'let justice be done though the heavens fall,' signifying that justice must prevail irrespective of consequences. The doctrine of *ex debito justitiae* further provides that a remedy is granted as of right where a party is legally entitled to it, as distinguished from discretionary relief, thereby imposing a duty upon the Court to ensure complete justice. Support is drawn from the judgment in *Mst. Parveen Ara v. Muhammad Hanif and others* (PLD 2025 SC 612).

32. In view of the foregoing facts, circumstances, and settled principles of law, the instant petition is hereby allowed. The respondents are directed to compute the petitioner's pensionary benefits by taking into account the entire length of his service, commencing from the date of his initial appointment on a contractual basis, instead of from the date of regularization. The respondents shall further ensure that all admissible pensionary benefits are released and extended to the petitioner forthwith, in accordance with law.

JUDGE

JUDGE