

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitutional Petition No. D-2166 of 2024
[Muharram Ali vs. Chancellor, through its Secretary and others]

Before:-

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

Petitioner : Muharram Ali,
through Mr. Abdul Sattar Shar,
Advocate.

Respondent No.1 : Chancellor, *through* Mr. Zufliqar Ali
Naich, Assistant Advocate General.

Respondents No.2 to 4 : Vice Chancellor and others *through*
Mr. Sheeraz Fazal, Advocate for the
respondent-University

Date of Hearing : 10.03.2026.

Date of Decision : 01.04.2026.

ORDER

Ali Haider 'Ada' J;The petitioner was appointed as a Chowkidar (BPS-02) at Shah Abdul Latif University, Khairpur(SALU) in the year 1999 on a daily-wage basis. Without any break in service, his services were regularized vide order dated 15.05.2013. Subsequently, upon revision of pay scales, the petitioner continued to serve the institution until attaining the age of superannuation, and was retired from service with effect from 09.06.2022.

2. After retirement, the pension case of the petitioner was processed by SALU by reckoning his service from the date of regularization, i.e., 15.05.2013, up to the date of retirement, i.e., 09.06.2022. Since the petitioner did not complete the service of ten years and on such calculation, his claim for pensionary benefits was declined. Aggrieved by this action, the petitioner has filed the instant petition.

3. Learned counsel for the petitioner contended that pensionary benefits constitute a vested right of a retired employee and cannot be denied arbitrarily. He submitted that the stance adopted by SALU, excluding the petitioner's service before regularization, is contrary to settled principles of law. It was argued that the petitioner had been in continuous service since 1999, without any interruption, and therefore his entire length of service ought to be counted from the date of initial appointment. In support of his contention, learned counsel placed reliance upon the judgment in *Chairman/Dean Sheikh Zayed Hospital, Lahore vs. Amjad Mehmood Khan* (2025 SCMR 168).

4. Conversely, learned counsel for SALU argued that the petitioner does not fulfill the minimum qualifying service as required under the law, and therefore is not entitled to pensionary benefits. He maintained that only the service rendered after regularization can be taken into account, and service on a daily-wage or temporary basis cannot be counted for pension purposes. In support of his submissions, reliance was placed upon the judgment of the Division Bench of this Court (Circuit at Larkana) in *Aijaz Ali Abro vs. Government of Sindh and others* (C.P. No. D-966 of 2022).

5. The learned Assistant Advocate General, while referring to the comments filed by the Additional Secretary-III on behalf of the Chancellor of SALU, submitted that after the promulgation of the Sindh Universities and Institutes Laws (Amendment) Act, 2018, the administrative powers of the universities are vested with the Chief Minister.

6. Heard learned counsel for the parties and perused the material available on record.

7. It is an admitted position that the petitioner was initially appointed in the year 1999 on a daily-wage basis as a Chowkidar (BPS-02). Subsequently, his services were regularized on the same post in the year 2013, and he ultimately retired from service in the

year 2022 upon attaining the age of superannuation. Throughout this entire period, the petitioner's service remained continuous, unbroken, and without any interruption. This fact has not been denied by the respondent-university, even in its written statement filed in the form of parawise comments. In such a view, it stands established that the petitioner remained in uninterrupted service from the date of his initial appointment till the date of his retirement. The record further reflects that the petitioner was initially engaged on a daily-wage basis in the Security Section of SALU. It is also evident that the said section is not project-based in nature; rather, it constitutes a permanent and integral part of the University. Therefore, the petitioner's appointment cannot be categorized as being against a project or temporary establishment; instead, it was within a permanent organizational unit of SALU.

8. In this backdrop, although the petitioner was initially engaged on a daily-wage or contractual basis, his appointment was against a permanent post, which was later regularized. Such an appointment falls within the ambit of **Section 2(b)(ii) of the Sindh Civil Servants Act, 1973**. Furthermore, the expression "permanent post" has been defined under clause (f) of the same section. For ready reference, the relevant provisions are reproduced hereunder:

2(b)(ii) a person who is employed on contract, or on work charged basis, or who is paid from contingencies; or

2(f) "permanent post" means a post sanctioned without limit of time;

9. The Hon'ble Supreme Court of Pakistan, in the case of *Province of Punjab through Secretary, Communication and Works Department and others versus Ahmad Hussain (2013 SCMR 1547)*, has observed that a careful perusal of the concept of a work-charged establishment makes it abundantly clear that such employment is not of a casual nature; rather, it is of a continuing character, existing from the date the employee is appointed against such a post.

10. Furthermore, 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.

11. 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.

12. Moreover, **Rules 2.2 and 2.3 of the West Pakistan Civil Services Pension Rules, 1963,** further clarify 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.*

13. Even for 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.

14. 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 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).

15. 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 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.

16. 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.

17. 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 daily-wage 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."

18. 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.

19. 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 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.

20. After an exhaustive examination of the record, upon careful consideration of the relevant statutory provisions, rules, and the case law cited *supra*, it is evident that the petitioner is entitled to the benefit of counting his entire continuous service from the date of his initial appointment, up to the date of his retirement, for pensionary benefits. It is well settled principle that Pension is a vested right of an employee as reliance in this regard is placed upon ***Muhammad Yousaf v. Province of Sindh and others (2024 SCMR 1689)***, wherein it has been held that pension is a vested right of an employee and is not a matter of bounty, charity, or gratuitous benefit by the

employer, but rather a recompense for long and faithful service rendered with dedication, toil, and commitment.

21. In view of the foregoing facts, circumstances, and the settled principles of law, the instant petition is allowed. The respondents are directed to calculate and release the pensionary benefits of the petitioner by treating his entire service from the date of his initial appointment, and not from the date of his regularization. The requisite benefits shall be extended to the petitioner in accordance with law forthwith.

JUDGE

JUDGE