

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Before:

Justice Arbab Ali Hakro

Justice Riazat Ali Sahar

C.P No.D-133 of 2025

[Abdul Razzaq v. Province of Sindh and 05 others]

Petitioner by : Mr.Abdul Rasheed Abro, Advocate

Respondents by : Mr.Rafiq Ahmed Dahri, Assistant Advocate General, Sindh

Dates of Hearing : **10.03.2026**

Date of Decision : **10.03.2026**

ORDER

ARBAB ALI HAKRO J:- The petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution, seeking enforcement of his asserted entitlement to regularisation of service under the Sindh (Regularisation of Adhoc and Contract Employees) Act, 2013 (“**2013 Act**”).

2. Petitioner Abdul Razzaq, asserts that he has been serving the Population Welfare Department as a Driver (BPS-04) since 26.05.2010 on contract basis. His appointment was made pursuant to an offer letter dated 25.05.2010 issued by the District Population Welfare Officer, which required the production of original documents and a medical fitness certificate. The petitioner submitted his duty report on 26.05.2010 and was allowed to join duties on the same day, as reflected in the office order issued by respondent No.5. It is stated that since his induction, the petitioner has continuously performed his duties with diligence and punctuality, without any adverse material on record. A performance certificate dated 04.01.2023, issued by the District Population Welfare Officer, confirms that no enquiries, disciplinary proceedings, or government dues are pending against him, and that the department requires his services. The petitioner maintains that he possesses the requisite qualification (Middle Pass), holds SBA domicile, and has served for nearly 15 years. He contends that after promulgation of the 2013 Act,

employees appointed on a contract basis before commencement of the Act were deemed to have been validly appointed on a regular basis under Section 3. Despite this statutory command, the petitioner alleges that he alone, along with a few others, has been excluded from regularisation, whereas employees appointed between 2009 and 2012 with similar credentials have been regularised. The petitioner further avers that the impugned order dated 10.01.2017, declaring him ineligible for regularisation, is contrary to the 2013 Act, discriminatory and violative of his fundamental rights. He asserts that he repeatedly approached the authorities for redress, but his requests were met with inaction.

3. Respondent No.1, through the Secretary, Population Welfare Department, contests the petition. It is stated that the petitioner was declared ineligible for regularisation on the basis of the Scrutiny Committee's findings and with the approval of the competent authority, vide Notification dated 10.06.2022. The respondent asserts that the petition suffers from laches, as the petitioner approached the Court after a lapse of two years. It is further contended that no due process was followed at the time of the petitioner's recruitment in 2010, and therefore, he could not be regularised. The department maintains that only those officials whose complete credentials and satisfactory performance certificates were available were regularised, whereas the petitioner's case, along with others appointed between 2009 and 2012, was not approved due to non-fulfilment of codal formalities. The respondent, however, admits the petitioner's continuous service, performance and training record, but maintains that the statutory and procedural deficiencies in his initial appointment preclude regularisation.

4. Learned counsel for the petitioner submits that the petitioner's appointment, joining and subsequent service are duly documented and acknowledged by the department. It is argued that the 2013 Act creates a deeming fiction under Section 3, whereby all contract employees in service before commencement of the Act stand regularised, subject only to eligibility for the post. The petitioner, being qualified, medically fit, and having served continuously for over a decade, squarely falls within the ambit of the Act. Counsel contends that the respondents have regularised numerous

employees appointed during the same period and possessing identical credentials, thereby singling out the petitioner without lawful justification. Such selective exclusion, it is argued, constitutes discrimination and violates Articles 4, 25, and 27 of the Constitution. It is further submitted that the plea of "codal formalities not fulfilled" is misconceived, as the petitioner's appointment was made by the competent authority and any procedural lapse, if at all, cannot be attributed to the petitioner nor used to deprive him of statutory benefits. Counsel relies on precedents in which the superior courts regularised long-serving contractual employees.

5. Conversely, the learned A.A.G. supports the stance of the department, submitting that the Scrutiny Committee, after examining the record, found that the petitioner's recruitment did not fulfil the requisite codal formalities. Therefore, his case could not be recommended for regularisation. It is argued that the 2013 Act does not override mandatory recruitment procedures, and that only employees whose appointments were procedurally sound can be regularised. Learned Law Officer further submits that the petition is hit by laches, as the petitioner challenged the departmental decision after an inordinate delay. It is contended that the petitioner has no vested right to regularisation and that the department acted strictly in accordance with the law.

6. We have heard the learned counsel for the petitioner and the learned Assistant Advocate General Sindh at considerable length. We have also meticulously examined the material available on record.

7. The controversy before us pivots upon the petitioner's claim that he stands regularised by operation of law under Section 3 of the 2013 Act and that the departmental refusal premised upon alleged non-fulfilment of codal formalities at the time of his initial appointment is legally untenable. The respondents, conversely, assert that the Scrutiny Committee found deficiencies in the petitioner's recruitment process, thereby disentitling him from regularisation.

8. The record reveals that the petitioner was appointed as Driver (BPS-04) through an offer letter dated 25.05.2010, issued by the District

Population Welfare Officer, Shaheed Benazirabad. The offer letter required the production of original documents, a medical fitness certificate, and verification of antecedents. The petitioner submitted his duty report on 26.05.2010 and was allowed to join duties on the same day. The office order explicitly records that he "has resumed his duty and is allowed to join his duty w.e.f 26th May, 2010. The petitioner's continuous service from 2010 to date is not disputed. The performance certificate dated 04.01.2023 issued by the District Population Welfare Officer affirms that he has performed his duties "regularly, punctually and satisfactorily" and that "there is no Government Dues/Enquiry/Disciplinary proceeding pending against him.

9. The respondents, in their parawise comments, concede the petitioner's service record, training and performance. Their sole objection rests upon the assertion that the Scrutiny Committee found that "codal formalities were not followed in recruitment during 2009-2012, and therefore the petitioner could not be regularised.

10. The question that arises is whether such an objection can override the statutory command embodied in Section 3 of the 2013 Act. Section 3 provides:

"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."

11. The above provision is couched in overriding terms "Notwithstanding anything contained in the Act, or rules made thereunder or any decree, order or judgment of a court", thereby creating a legislative fiction that validates the appointment of all eligible contract employees who were in service immediately before commencement of the Act. The deeming clause is not merely declaratory; it is constitutive. It transforms the employee's legal status by operation of law, subject only to the condition of eligibility for the post.

12. The respondents have not disputed the petitioner's eligibility for the post of Driver (BPS-04). His educational qualification (Middle Pass), domicile, medical fitness and continuous service are all admitted. The department itself issued his appointment letter, accepted his joining, assigned him duties and retained him for nearly fifteen years without any adverse material. The respondents' own certificate acknowledges that their services "are needed to department."

13. The departmental stance that "codal formalities were not followed" is conspicuously vague. No specific deficiency has been identified. No document has been produced to show that the petitioner's appointment was irregular, fraudulent or procured through misrepresentation. The petitioner cannot be penalised for any administrative lapse, if any, committed by the appointing authority. The law does not permit the State to approbate and reprobate retaining an employee for fifteen years, extracting service, acknowledging his performance and then denying him statutory protection on the basis of an unspecified procedural irregularity.

14. More critically, the 2013 Act was enacted precisely to cure such procedural irregularities. The legislative intent was to regularise long-serving contract employees, notwithstanding technical defects in their initial appointment, provided they were eligible and in service before the commencement of the Act. The phrase "shall be deemed to have been validly appointed" is a legislative device to extinguish objections of the very nature now raised by the respondents.

15. The respondents' reliance on the Scrutiny Committee's findings cannot override the statute. A committee constituted under executive instructions cannot dilute, circumscribe or nullify a statutory deeming provision. The 2013 Act does not empower any committee to sit in judgment over appointments made years earlier, nor does it authorise retrospective invalidation of service on the basis of administrative technicalities.

16. The plea of laches raised by the respondents is equally misconceived. The petitioner's cause of action is continuing in nature. He remains a contract employee despite a statutory mandate for regularisation. The refusal to

regularise him constitutes a recurring wrong, renewed each day he is denied the status conferred by law. Courts have consistently held that where the violation is ongoing, the doctrine of laches does not apply with the same rigour.

Furthermore, the respondents admit that numerous employees appointed between 2009 and 2012 were regularised. The petitioner, who possesses identical credentials and was appointed through the same process, has been singled out. Such selective exclusion, without any rational basis, offends Articles 4 and 25 of the Constitution. Administrative discretion cannot be exercised in a manner that is arbitrary, capricious or discriminatory.

17. The petitioner's case is further strengthened by the fact that the department has not alleged any misconduct, inefficiency or adverse record. On the contrary, the department acknowledges his satisfactory service and the need for his continued employment. The refusal to regularise him, therefore, lacks any substantive justification.

18. In these circumstances, the respondents' position collapses under the weight of the statutory scheme, the admitted facts and the constitutional guarantees of equality and fair treatment. The petitioner fulfils all the requirements of Section 3 of the Act. He was appointed on a contract basis, he was eligible for the post, and he was in service immediately before the commencement of the Act. The deeming provision, therefore, operates in his favour and he stands regularised by force of law.

19. The departmental refusal, premised upon an amorphous allegation of non-fulfilment of codal formalities, is legally unsustainable. It is contrary to the 2013 Act, inconsistent with the admitted record and violative of constitutional protections.

20. For the reasons recorded above, this petition succeeds. It is declared that the petitioner fulfils the statutory conditions prescribed under Section 3 of the 2013 Act and is therefore deemed to have been validly appointed on a

regular basis by operation of law. The respondents are directed to issue the petitioner's regularisation order, together with all lawful consequential benefits, within thirty days.

JUDGE

JUDGE

Ali Haider