

IN THE HIGH COURT OF SINDH, KARACHI

C. P. NO. D-3414 / 2025

(Muhammad Furqan Omair Malik & Another Vs. Federation of Pakistan & Another)

C. P. NO. D-5792 / 2025

(Shahzad Ali Vs. Federation of Pakistan & Another)

Present:

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Muhammad Jaffer Raza

Date of hearing and order:- 05.08.2026.

Mr. Qadir Hussain Khan, Advocate for Petitioners.

Mr. Muhammad Akbar Khan, Assistant Attorney General.

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Adnan-ul-Karim Memon, J.

The Petitioners have filed these Petitions under Article 199 of the Constitution of the Islamic Republic of Pakistan for the following reliefs: -

- I. Declare that the Petitioners are entitle for all benefits of regular employment from the date of initial appointment or date of regularization till date as the Petitioners were regularized vide Letter No. NIO/485/14/3237 dated 16.04.2014 (Annexure B) and Letter No. NIO/P-488/14/738 dated 02.10.2014 (Annexure B/1).
- II. Direct the Respondents to decide the Applications (Annexure E & E/1) of the Petitioners in accordance with law and release all benefits and Arrears of Regularization of Services of Petitioners from April 2014 & October 2014.
- III. Restrain the Respondents from taking any coercive action against the Petitioners till decision of this Petition.
- IV. Any other relief(s), which this Hon'ble Court may deem fit and proper.”

2. The Petitioners along with their counsel are present and submit that they are employees of the National Institute of Oceanography (NIO), an autonomous body established under the National Institute of Oceanography Act, 2007, working under the administrative control of the Ministry of Science and Technology. They were initially appointed as Clerk-cum-Typists (BPS-07) and Chowkidar (BPS-01) on contract basis in 2013 and were subsequently regularized through separate office orders issued in 2013 and 2014. According to the Petitioners, they have rendered more than ten years of continuous, satisfactory and blemish-free service. They submitted that despite their regularization, however, the Respondents have failed to extend consequential service benefits, including arrears and other financial entitlements from the dates of regularization.

They contend that after an earlier constitutional petition seeking regularization was disposed of as not pressed upon discovering that their services had already been regularized, they submitted representations to the department for release of arrears and regular service benefits, but no decision was taken. They assert that such inaction is arbitrary, discriminatory and violative of Articles 4, 5, 9, 18 and 25 of the Constitution, besides offending the doctrines of legitimate expectation, vested rights and equal pay for equal work. They therefore seek declarations that they are entitled to all consequential benefits flowing from their regularization, directions for payment of arrears and restraint against any coercive action.

3. The Respondents, while admitting that the Petitioners are working in NIO, dispute the foundation of the claim. They submit that NIO is an autonomous statutory body governed by the NIO Act, 2007, under which the Board of Governors exercises overall control, and the Director General functions under its supervision. According to the Respondents, the Petitioners were initially engaged on daily wages, and although regularization orders were issued by the then Director General, those orders were subsequently withdrawn in view of audit objections. They maintain that the validity of those regularization orders could only be considered by the Board of Governors. The Respondents further state that the Petitioners had earlier challenged the withdrawal of regularization through Constitutional Petition No. D-5024 of 2020, which was disposed of by this Court with the direction that they would continue as daily-wage employees. Consequently, they contend that the Petitioners continue to serve only as daily wagers and are entitled merely to the lump-sum monthly remuneration payable to such employees. They deny that the Petitioners possess any legal right to arrears, back benefits or other regular service privileges, asserting that even where regularization orders existed, they operated prospectively and conferred no entitlement to retrospective financial benefits. The Respondents accordingly deny violation of any constitutional or legal right and pray for dismissal of the petitions on merits.

4. When confronted with the legal position about the decision on the representation of the petitioners, learned AAG submitted that if the petitioners have moved any representation, the competent authority definitely will take an appropriate decision in accordance with law. Learned counsel for the petitioners seeks disposal of these petitions in terms thereof.

5. We have heard the learned counsel for the parties and perused the record with their assistance.

6. It emerges that the controversy essentially revolves around the Petitioners' claim for consequential service benefits and arrears allegedly flowing from the

regularization orders dated 31.05.2013, 16.04.2014 and 02.10.2014. While the Petitioners assert that their services stood validly regularized and that they have continued to serve the Respondent Department for more than a decade, the Respondents have taken a categorical stance that the Petitioners were initially engaged on daily wages, that the regularization orders were subsequently withdrawn owing to audit objections, and that pursuant to the order passed by this Court in the earlier constitutional petitions, the Petitioners continued to serve merely as daily-wage employees. Thus, the very foundation of the Petitioners' claim, namely the subsistence and legal effect of the alleged regularization orders, is seriously disputed by the Respondents.

7. It is a settled principle of constitutional jurisprudence that where entitlement itself is disputed and depends upon determination of controversial questions of fact requiring examination of service record, departmental proceedings, audit observations, resolutions of the competent authority and the legal effect of earlier judicial orders, such issues ordinarily do not fall within the scope of constitutional jurisdiction under Article 199 of the Constitution.

8. Before issuance of a writ of mandamus, the petitioner must establish an existing and undisputed legal right coupled with a corresponding statutory duty upon the respondents. Where the existence of such right itself remains disputed, constitutional jurisdiction cannot ordinarily be invoked for grant of monetary or service benefits.

9. In the present case, the Petitioners have primarily relied upon the regularization orders and have sought consequential monetary benefits therefrom. However, the Respondents have specifically pleaded that those regularization orders stood withdrawn, that the Petitioners continued only as daily-wage employees in terms of the earlier order passed by this Court, and that the authority competent to deal with such matters under the National Institute of Oceanography Act, 2007, is the Board of Governors. These assertions have neither been conclusively disproved nor adjudicated upon through any competent departmental determination placed before this Court. Consequently, the Petitioners have failed to demonstrate an admitted or indisputable legal right entitling them to retrospective arrears and service benefits so as to justify issuance of a constitutional writ.

10. Equally, the doctrines of legitimate expectation, equal pay for equal work and vested rights invoked by the Petitioners cannot be applied in isolation unless the Petitioners first establish the continued validity of their regularization and the legal basis of the claimed benefits. Legitimate expectation cannot override statutory provisions or confer a benefit contrary to the governing service rules.

Likewise, the principle of equal pay for equal work is attracted only where the employees are shown to be similarly situated in law and fact, which determination itself requires factual inquiry not possible in constitutional proceedings on the basis of disputed pleadings.

11. Nevertheless, it is also evident from the record that the Petitioners submitted representations/applications before the competent departmental authorities seeking release of service benefits, and there is nothing on record to show that those representations have been disposed of by means of a reasoned and speaking order. Administrative authorities are under a legal obligation to consider and decide representations made by their employees strictly in accordance with the applicable law, rules and policy after examining all relevant material.

12. In these circumstances, this Court is not persuaded to grant the declaratory relief sought by the Petitioners declaring them entitled to arrears and consequential benefits from the dates of their alleged regularization, as such declaration would necessarily require prior adjudication of disputed questions regarding the validity and effect of the regularization orders and the Petitioners' service status. However, to ensure observance of due process and fair administration, it would be appropriate to direct the competent authority, namely the Board of Governors/competent authority under the National Institute of Oceanography Act, 2007, to consider and decide the Petitioners' pending representations by passing a reasoned and speaking order after examining the effect of the regularization orders if any, the subsequent withdrawal, the audit observations, the previous order of this Court, and the applicable statutory rules and service regulations, within two months period.

13. Consequently, with the consent of the parties present in court, and without touching the merits of the case, these petitions are disposed of with the direction that the competent authority shall decide the Petitioners'; and /or any of the employee of the similar category and their pending applications/representations, if filed earlier, after affording them an opportunity of hearing, if so required by law, by means of a reasoned and speaking order strictly in accordance with the National Institute of Oceanography Act, 2007, the applicable service rules and all relevant judicial orders, preferably within sixty (60) days from the date of receipt of a certified copy of this order. All pending applications, if any, also stand disposed of.

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