

THE HIGH COURT OF SINDH BENCH AT SUKKUR

Before:

Justice Arbab Ali Hakro

Justice Muhammad Osman Ali Hadi

C. P. No. D – 1283 of 2023

[Haider Ali v. Province of Sindh and another]

Petitioner by : Mr.Imdad Ali Malik, Advocate

Respondents by : Mr. Shahriyar I. Awan, Assistant Advocate
General Sindh

Date of Hearing : **25.08.2026**

Date of Decision : **25.08.2026**

ORDER

ARBAB ALI HAKRO J. – Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner seeks a declaration that he is entitled to regularization as a Family Welfare Assistant (Male), BPS-5, under Section 3 of the Sindh (Regularization of Ad hoc and Contract Employees) Act, 2013, and a consequential direction to the respondents to issue the requisite notification and provide lawful benefits.

2. The necessary facts may be stated briefly. The petitioner was offered a one-year contract appointment as FWA (Male), BPS-5, by order dated 15.01.2013. He accepted the offer on 12.03.2013 and joined the District Population Welfare Office, Karachi East, on 13.03.2013. His medical fitness certificate is dated 12.03.2013. His contract continued through extensions; on 04.08.2017 he was transferred to Sukkur, where he asserts that he continues to serve. The departmental correspondence dated November 2019 also records his designation, BPS, domicile, and date of appointment as 13.03.2013 in the exercise concerning the regularization of contractual employees appointed in 2013.

3. The respondents, in their para-wise comments, admit the contractual appointment dated 15.01.2013 and do not deny the transfer to Sukkur or continued performance of duty. They state that, after promulgation of the 2013 Act, documents of contractual employees were called for placement before a Scrutiny Committee; the petitioner's documents were not received, whereas employees found eligible with complete documents were regularized. They

further maintain that although the Act does not expressly provide for a Scrutiny Committee, such scrutiny of fitness and eligibility is permissible in view of **Dr. Iqbal Jan and others**¹. They acknowledge that eligible petitioners in C.P. No. D-5503 of 2021, concerning the same department, were regularized and state that the petitioner's case would be taken up on the findings of Scrutiny Committee-I and approval of the competent authority. Respondent No.2 has adopted the same stance and para-wise comments as respondent No.1.

4. Learned counsel for the petitioner contended that section 3 of the Act creates a statutory deeming fiction in favour of an otherwise eligible contract employee serving immediately before commencement of the Act; hence an executive committee cannot convert a mandatory legislative command into an open-ended discretion. He submitted that the joining report, medical certificate, service record and departmental correspondence establish service before 25.03.2013, while similarly placed employees of the same department, including those in BPS-5, were regularized with effect from that date. Reliance was placed on **Dr. Iqbal Jan** (supra), **Hameed Akhtar Niazi**² and **Abdullah Jumani and others**³.

5. Conversely, the learned Assistant Advocate General, Sindh, supported the departmental position and submitted that contractual service, by itself, confers no vested right to regularization. According to him, the petitioner must establish that he was in service immediately before the commencement of the Act and was otherwise eligible for appointment to the post; verification of the original educational, domicile, age, medical and service documents by the competent committee is therefore necessary. He prayed that no direct writ of regularization be issued without such verification.

6. We have heard learned counsel for the parties and have carefully perused the record with their assistance. The material questions are whether the petitioner falls within the class protected by section 3 of the Act, the permissible scope of departmental scrutiny, and the relief warranted on the present record.

7. The Act came into force at once on 25.03.2013. In substance, Section 2 excludes daily-wage and work-charged employees and applies to persons appointed on an ad hoc or contractual basis against posts in BPS-1 to BPS-18 or equivalent scales. Section 3 provides that an employee within that

¹ Dr. Iqbal Jan and others v. Province of Sindh and others (2014 PLC (C.S.) 1153)

² Hameed Akhtar Niazi v. Secretary, Establishment Division (1996 SCMR 1185)

³ Abdullah Jumani and others v. Province of Sindh and others (2024 SCMR 1258)

class, if otherwise eligible for appointment and serving in a department or project of the Government immediately before commencement, shall be deemed to have been validly appointed on a regular basis. The expression 'shall be deemed' is mandatory and creates a legal fiction. Once the foundational facts exist, the legal consequence follows by force of statute; it is not a bounty dependent upon unstructured executive choice.

8. A deeming provision must be carried to its logical end, but only within the field for which it was enacted. Thus, the Act does not protect a daily-wage or work-charged employee, a person who entered service after the cut-off, or one lacking a substantive qualification prescribed for the post. Likewise, fraud, forged credentials, or the absence of a genuine Government post cannot be cured by invoking beneficial legislation. The words 'otherwise eligible' therefore permit verification of age, qualification, domicile or PRC, medical fitness where prescribed, authenticity of credentials, the nature of appointment, and actual service immediately before 25.03.2013. They do not, however, authorize the department to add conditions absent from the Act or to defeat the statutory consequence through its own failure to forward, preserve, or process official papers.

9. In **Dr. Iqbal Jan** (supra), the Divisional Bench of this Court held that covered employees were deemed to have been validly appointed on a regular basis under section 3, while preserving lawful action where the competent authority had a genuine reservation about an individual's fitness or eligibility. The ratio harmonizes the two limbs of section 3: regularization is statutory, whereas verification is confined to the qualifying facts. A Scrutiny Committee may therefore serve as an administrative fact-finding mechanism, but it is neither a source of power superior to the Act nor a discretionary veto over it.

10. The general rule stated by the Supreme Court is equally clear. A contractual employee has no inherent right to absorption merely because service has continued for a long period; regularization must rest upon law, rules, or a valid policy, and public employment cannot be regularized in disregard of prescribed qualifications and lawful recruitment requirements. That principle does not defeat the present claim because the petitioner invokes a specific provincial enactment containing an express deeming clause. Rather, it requires the Court to enforce that enactment according to its terms and not to create a right beyond it.

11. In **Abdullah Jumani and others** (supra), the Supreme Court set aside the judgment declaring section 3 *ultra vires* in relation to higher-scale posts without hearing the affected employees and remanded the matter for a fresh decision. The present petitioner holds a BPS-5 post and no question of recruitment through the Public Service Commission arises on the record before us. The decision nonetheless reinforces that rights and status claimed under the Act cannot be displaced without due process and without hearing those affected.

12. The principle in **Hameed Akhtar Niazi** (supra) requires the State, as a matter of good governance, to extend the benefit of settled point of service law to persons who are genuinely similarly situated, rather than compel repetitive litigation. That rule does not sanction negative equality and cannot confer an illegal benefit. It applies only after lawful parity is shown. Here, the department itself admits the regularization of eligible petitioners in *C.P. No. D-5503 of 2021*. The notification dated 05.09.2022, placed on record, shows regularization under section 3, with effect from 25.03.2013, of employees, including Family Welfare Assistants in BPS-5. The same exercise excluded individual employees for stated, post-specific reasons. This departmental practice demonstrates both the applicability of the Act to the cadre and the necessity of an individualized reason where a benefit is withheld.

13. Viewed against this legal framework, the Respondents' sole substantive objection, that the Petitioner's documents were not received, is too vague to justify indefinite denial. The comments do not identify the missing document, the date or mode of demand, the person from whom it was sought, or the statutory condition to which it related. More importantly, the departmental letter dated 21.11.2019 records the Petitioner's particulars in the regularization exercise, and his appointment, acceptance, joining and medical documents are before the Court. The State may verify those records, but cannot rely on an unexplained internal omission as if it were a substantive disqualification.

14. At the same time, a direct and unconditional declaration of regular status would be inappropriate unless the prescribed qualification for FWA (Male) BPS-5, applicable on the date of appointment, and the authenticity of the credentials are verified against the original departmental record. The judicial function is to enforce the statute, not to undertake primary verification that belongs to the competent authority. The appropriate course is therefore a limited, time-bound inquiry, structured so that statutory entitlement is not lost in indefinite administrative circulation.

15. For the foregoing reasons, this petition is **disposed of** as follows. It is declared that the petitioner is prima facie within the class governed by section 3 of the Sindh (Regularization of Ad hoc and Contract Employees) Act, 2013, subject only to verification that he was actually serving immediately before 25.03.2013, that his appointment was on contract and not on a daily-wage or work-charged basis, that the post was a Government post within BPS-1 to BPS-18, and that on the relevant date he possessed the substantive eligibility prescribed for FWA (Male) BPS-5.

16. Respondent No.1 shall, through the competent authority or the already constituted Scrutiny Committee, complete this verification within forty-five days of receipt of a certified copy of this order. Within seven days, the petitioner shall be informed in writing of any specific document alleged to be missing and the statutory purpose for which it is required; he shall be afforded fifteen days to supply it or to facilitate its verification. The inquiry shall be confined to the conditions identified above and shall not reject the claim merely because a departmental forwarding letter, selection minute or other paper generated and retained by the department is unavailable, unless its absence establishes substantive legal ineligibility.

17. If the petitioner satisfies the foregoing conditions, respondent No.1 shall issue the regularization notification within fifteen days of completion of verification, effective from 25.03.2013, with seniority and other consequential benefits to be determined strictly in accordance with the applicable service and financial rules, after adjustment of salary already received. If the claim is rejected, the competent authority shall pass and communicate a reasoned speaking order identifying the precise ground of disqualification, the governing provision or rule, and the material relied upon, after affording the petitioner an opportunity of hearing.

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Abdul Basit