

**IN THE HIGH COURT OF SINDH, KARACHI**

**C.P No.D-5483 of 2016**

**Present**

**Mr. Justice Irfan Saadat Khan**

**Mr. Justice Adnan-ul-Karim Memon**

Papoo Khan

.....

Petitioner

V E R S U S

Province of Sindh & others

.....

Respondents

**Dates of hearing: 31.08.2018**

Mr. Arshad Khan Tanoli advocates for the Petitioner.

Mr. Ali Safdar Deper AAG for the Respondents

**J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J: -** Through the instant petition, the petitioner has prayed for the following relief(s).

- i) ***Declare that Petitioner is deemed to have been validly appointed as Assistant Superintendent Prison on regular basis with effect from the date of the commencement of the Sindh Civil Servants (Regularization of adhoc Appointment) Act, 1989, i.e. 22.05.1989.***
- ii) ***To direct the Respondent No.2 to place the case of petitioner before the Special Committee for regularizing his service in terms of section 3 of Sindh Civil Servants (Regularization of adhoc Appointments) Act, 1989, on the basis of recruitment rules available at the time of his appointment or from the date of promulgation of act.***
- iii) ***To direct the Respondents to implement the decision taken in the minutes of meeting of Scrutiny Committee No.3 dated 02.10.2015 for initiating summary for Chief Minister Sindh for seeking appropriate orders with regard to regularizing the service of Petitioner in terms Sindh Civil Servants ( Regularization of adhoc appointments) Act, 1989.***
- iv) ***To direct the Respondents to issue final seniority list of Assistant Superintendent Prisons (BS-16) after including the name of petitioner in terms of Section 8 (4) of the Sindh Civil Servant Act, 1973 and Rule 10910 7 Rule 11(b) of Sindh Civil Servants ( Probation, Confirmation & Seniority) Rules, 1975, and to consider the petitioner for his promotion against the post of Deputy Superintendent Prisons (BS-17)***

2. Brief facts of the case as per averments of the parties are that on 24.03.1987 the Petitioner was appointed as Assistant Superintendent Prison in (BPS-11) on adhoc basis against a suspension vacancy of an official namely Mr. Riaz-ur-Rehman Khan of Prisons Department. The Petitioner has submitted that said Riaz ur Rehman Khan did not join his duty and proceeded on leave and in the meanwhile expired on 28.09.1989; therefore his service was liable to be confirmed against that post. Petitioner has further averred that he completed his probationary period and necessary departmental trainings, but no formal confirmation order was issued by the respondents. Petitioner has submitted that on 22.05.1989 Provincial Sindh Assembly passed Sindh Civil Servants (Regularization of Adhoc Appointments) Act, 1989 and the Petitioner being adhoc employee came within the ambit of the Act, 1989 and was deemed to be validly appointed and regularized against the post of Assistant Superintendent Prisons, but the Respondents did not comply the provision of the Act, 1989. The Petitioner has submitted that he continued to serve the Respondent-department without break in service and now reached at the age of more than 56 years and he is holding the aforesaid post and drawing regular pay and allowances till today without further promotion. Petitioner has further submitted that the Provincial Sindh Assembly promulgated Sindh (Regularization of adhoc and contract employees) Act, 2013 and the Petitioner is entitled to be benefited under the aforesaid beneficial enactment also. Petitioner added that his case was processed for regularization of his service, but was regretted by the Competent Authority on the premise that at the time of appointment the Petitioner did not possess the required qualifications,

which is graduation, though at the relevant time there was no requirement of graduation condition as provided under the West Pakistan Prisons Department (Assistant Superintendent of Jails) Service Rules 1962. The Petitioner has submitted that his colleagues and juniors have been regularized as Assistant Superintendent Prison under the Act, 1989 and the Petitioner has been left out, which is discriminatory attitude of the Respondents and his case falls within the ambit of Article 25 of the Constitution of the Islamic Republic of Pakistan 1973. The Petitioner has averred that the Respondent-department did not recommend his case for regularization of his service and even the Competent Authority has condemned the Petitioner without hearing him in terms of Article 10-A of the Constitution. The Petitioner being aggrieved by and dissatisfied with non-regularization of his service as Assistant Superintendent Prison has filed the instant petition on 07.10.2016.

3. Upon notice, the Respondent No.2 filed statement and the Respondent No.3 filed para-wise comments and both of them denied the allegations leveled by the petitioner against them.

4. Mr. Muhammad Arshad Khan Tanoli, learned Counsel for the Petitioner has contended that the executive posts in Sindh Prisons Department have been upgraded likewise the post of Assistant Superintendent Prison has also been upgraded from BPS-14 to BPS-16 and the Petitioner ought to have been regularized as Assistant Superintendent of Prisons in BPS-16, as provided under section 3 of the Sindh Civil Servant ( Regularization of adhoc appointments) Act, 1989; that the Petitioner is qualified to hold the post of Assistant

Superintendent in BS-16, thus his adhoc period may be regularized under the Act, 1989, and Sindh (Regularization of Adhoc and Contract Employees) Act, 2013; that at the time of appointment the Petitioner was Intermediate and the requirement for the post was fulfilled accordingly; that after the death of Mr. Riaz ur Rehman Khan his service was deemed to be regularized on the available vacancy; that the Petitioner is serving the respondent Department without any break in service; thus, cannot be deprived from such beneficial legislation; that the case of the Petitioner falls within the ambit of Article 25 of the Constitution, 1973 as his colleagues and juniors have been regularized in the Prisons Department and the Petitioner is entitled for the similar relief under the law; that the Petitioner has not been treated in accordance with law. The learned Counsel for the Petitioner in support of his contention has relied upon the cases of Shams ul Haq Mehar & others Vs. Province of Sindh 2013 PLC (C.S) 1046, Inspector General of Police PB Lahore & others Vs. Ali Abbas & others ( NLR 1984 Service 162, Chairman Pakistan Railways & others Vs. Arif Hussain & others ( 2008 PLC (C.S) 240, Sarfraz Ahmed Vs. Government of Sindh 2006 PLC (C.S) 1304, Collector of Customs and Central Excise Peshawar & others Vs. Abdul Waheed & others (2004 PLC (C.S) 301, Water and Power Development Authority Vs. Abbas Ali Malano & others (2004 PLC (C.S) 1, and Dr. Bashir Ahmed & others Vs. Province of Sindh & others (2016 PLC (C.S) 179).

4. Mr. Ali Safdar Depar, learned AAG has raised the issue of maintainability of the Petition and argued that Petitioner was appointed as Assistant Superintendent Prison BS-11 on adhoc basis vide order No. 97 dated 24.3.1987 against a suspension vacancy pending approval

of the Departmental Selection Committee. As per West Pakistan Prison Department Service Rules, 1962, the prescribed qualification for initial recruitment to the post of Assistant Superintendent Prison BS-11 was Intermediate, but, the post of Assistant Superintendent was upgraded to BS-14 further upgraded to BS-16 on 25.02.1992 with effect from 01.10.2010. He further stated that in pursuance of Clause 3 of the Sindh Civil Servants (Regularization of Adhoc Appointments) Act, 1989, case of the Petitioner for regularization was placed before the Departmental Promotion Committee (DPC) in its meeting held on 22.08.2006 under the Chairmanship of the Secretary to the Government of Sindh, Home Department, but the DPC did not approve it for regularization for the reason that the Petitioner does not possess degree of graduation; that later on the SGA &CD in pursuance of section 3 of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, with approval of the Chief Minister, vide notification No. SORI (SGA&CD) /12-3/2013 dated 16.9.2014 constituted three Scrutiny Committees for scrutiny of cases of various grades of Government employees for their regularization. The Committee No. 3 was for scrutiny of cases of BS-16 to BS-18. The case of the Petitioner was also placed before the said Scrutiny Committee No. 3 which did not approve his regularization. The Scrutiny Committee observed that if the Administrative Department considers necessary, it may initiate a summary containing factual position for orders of the Chief Minister Sindh with regard to regularization of the Petitioner. Accordingly, the summary dated 15.12.2017 was submitted to the Chief Minister Sindh, who, vide order dated 03.1.2018 agreed with the decision of the Scrutiny Committee, which order has not been impugned by the Petitioner in the instant

petition. He further stated that the post of Assistant Superintendent Prison (BPS-16) is to be filled through competitive process and not otherwise and the Petitioner cannot claim vested right for regularization of his service against this post. He lastly prayed for dismissal of the petition.

5. The learned Counsel for the Petitioner, in exercising his right of rebuttal asserted that the Petitioner was entitled to beneficial legislation and should be regularized irrespective of the fact that he does not possess basic academic qualification of graduation. Whereas, the learned AAG submitted that the Petitioner does not possess basic qualification of graduation, hence, could not be regularized.

6. We have heard the learned Counsel for the parties and perused the material available on record and case law cited at the bar.

7. We feel that case of the petitioner needs to be elaborated in light of enactments by the Government of Sindh for regularization of services of its employees in terms of the said Acts. As informed by the learned AAG that case of the Petitioner was placed before the departmental promotion committee in its meeting held on 22.8.20106, which did not approve his regularization for the reason that he does not possess basic qualification of graduation. The Scrutiny Committee No 3, examined the notification dated 16.10.2014, which is reproduced below in its meeting held on 15.9.2015:

**GOVERNMENT OF SINDH  
SERVICES, GENERAL ADMINISTRATION &  
COORDINATION DEPARTMENT  
(REGULATION WING)**

Karachi, dated the 16<sup>th</sup> September, 2014

**NOTIFICATION**

**NO.SORI(SGA&CD)12-3/2013:-** In pursuance of section 3 of the Sindh (Regularization of Ad hoc and Contract Employees Act, 2013 (Sindh Act No.XXV of 2013) and with the approval of the competent authority (Chief Minister), the Government of Sindh are pleased to constitute the following Scrutiny Committee to scrutinize the eligibility of the employees appointed on adhoc or contract basis excluding the employee appointed on daily-wages or work-charged basis, for the purpose of the said Act:-

**Scrutiny Committee No.1 at provincial level (for posts in BS-1 to 15)**

- |   |          |
|---|----------|
| 1. Administrative Secretary/Special Secretary                 | Convener |
| 2. Additional Secretary/Deputy Secretary concerned Department | Member   |
| 3. Additional Secretary/Deputy Secretary, SGA&CD              | Member   |

**Scrutiny Committee No.2 at district level (for posts in BS-1 to 15)**

- |                                |          |
|--------------------------------|----------|
| 1. Deputy Commissioner         | Convener |
| 2. Head of Attached Department | Member   |
| 3. Deputy Secretary, SGA&CD    | Member   |

**Scrutiny Committee No.3 at provincial level (for posts in BS-16 to 18)**

- |  |          |
|--|----------|
| 1. Secretary (Services), SGA&CD                            | Convener |
| 2. Administrative Secretary/Special Secretary              | Member   |
| 3. Chairman Sindh Public Service Commission or his nominee | Member   |
| 4. Additional Secretary/Deputy Secretary, SGA&CD           | Member   |

**TORs of the aforesaid Committees:**

- a) To scrutinize academic records (degrees/diploma certificates) and other relevant of the contract/adhoc appointees.
- b) To verify that the appointment on contract or adhoc basis in the Government Department or its project were made in accordance with the provisions of the respective recruitment rules i.e. age limit, academic/technical qualification, experience and after observance of all codal formalities, including advertisement of the post in newspapers, minutes of the Selection Committee.
- c) The Committee shall not recommend any employee who was not appointed by the respective appointing authorities as laid down in Rule-4(1) of the Sindh Civil Servants (Appointment, Promotion & Transfer)Rules, 1974;
- d) That the Committee shall not recommend an employee, whose performance in the Department or its project has not been satisfactory.
- e) That the Committee shall ensure that the principle of fair and equal opportunity has been provided to all contract employees during the scrutiny process.
- f) To submit its recommendations to the Chief Minister through the Finance Department for orders.

The Committee(s) shall submit its/their recommendations within Ninety (90) days.

**SAJJAD SALEEM HOTIANA  
CHIEF SECRETARY  
GOVERNMENT OF SINDH**

NO.SOII(SGA&CD)3-35/2013 (HOME)  
GOVERNMENT OF SINDH SERVICES,  
GENERAL ADMINISTRATION AND  
COORDINATION DEPARTMENT  
Karachi, dated the 02<sup>nd</sup> October,  
2015

1. The Secretary, Home Department, Government of Sindh, Karachi.
2. The Additional Secretary, Law Department, Govt. of Sindh, Karachi.
3. The Additional Secretary (Services-I), SGA&CD, Govt. of Sindh, Karachi.
4. The Additional Secretary (Regulation), SGA&CD, Govt. of Sindh, Karachi.
5. The Additional /Deputy Secretary, Finance Department, Govt. of Sindh, Karachi.

**SUBJECT: MINUTES OF MEETING REGARDING REGULARIZATION OF CONTRACT EMPLOYEES HOME DEPARTMENT, UNDER THE SINDH (REGULARIZATION OF ADHOC AND CONTRACT EMPLOYEES) ACT, 2013.**

I am directed to forward herewith a copy of approved minutes of the meeting (03 pages) duly signed by all members of Scrutiny Committee No.3 at Provincial level regarding regularization of Adhoc/Contract Employees of Home Department (including the case of Mr. Naib Ali Bhabhan), under the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, held on 15.09.2015.

2. It is requested to take further necessary action in the matter in accordance with the decisions taken in the meeting.

(MUKHTIAR AHMED)  
SECTION OFFICER-II

8. The Scrutiny Committee No.3 did not approve case of the petitioner for regularization as he did not possess basic qualification of graduation. The operating part of the decision of the Scrutiny Committee is reproduced below:

10. *The Committee observed that Mr. Papoo Khan Solangi was appointed on Adhoc basis against suspension vacancy. He was appointed without advertisement of the post. No selection process was followed in his case. His case was also not considered by Departmental Promotion Committee held on 22.08.2006 under Regularization of Adhoc Appointment Act, 1989. However, Committee No.03 observed at the time of appointment he was possessing required Intermediate degree but Departmental Promotion Committee held on 22.08.2006 did not consider his case, as did not possess the prescribed qualification for the upgraded post, i.e. Graduation.*
11. *The Committee after due discussion observed that case of Mr. Papoo Khan Solangi, Assistant Superintendent Prisons (BS-16) deviates from the terms and conditions laid down in Notification dated 16.09.2014. However, the Committee observed that the Administrative Department, if considers necessary, may initiate a summary incorporating factual position for seeking appropriate orders of for Chief Minister Sindh with regard to the regularization*



*of Mr. Papoo Khan Solangi, Assistant Superintendent Prisons (BS-16)”*

9. In view of the forgoing facts and circumstances, the question at hand could be reduced to the following:-

***Whether the adhoc period of service of the petitioner as Assistant Superintendent Prisons in BPS-16 can be regularized, retrospectively i.e 24.03.1987 under section 3 of Sindh Civil Servants (Regularization of Adhoc Appointments) Act 1989, when the post was in BPS 11?***

10. To answer the above question, we have to look at the Appointment Order dated 24.03.1987 issued by the Inspector General of Prisons Sindh Hyderabad in favor of the petitioner, an excerpt of the same is reproduced below for sake of convenience:-

***“In pursuance of the orders form the Chief Minister of Sindh conveyed under Chief Minister Secretariat Sindh Karachi letter No. DS-II/CHS/PA/87-1 dated 3.3.1987, Mr. Papoo Khan son of Lal Muhammad Solangi is hereby appointed temporarily to the post of Assistant Superintendent B-11 viz Rs. 700-35-1400 plus index pay and other allowances as admissible under the rules on adhoc basis pending the approval of the Departmental Selection Committee against a suspension vacancy subject to the condition that in case Assistant Superintendent under suspension reinstated to duty his services will be terminated.***

***His appointment is hereby made on the following terms and conditions and posted at Central Prison Hyderabad.***

***1. He will join the post at his own expenses.***

***2. He has been appointed against a purely temporary suspension vacancy and his services can be dispensed with at any time without any notice.***

***3. If vacancy becomes substantive, he will be on probation for a period of 2 years during which if his work or conduct is not found satisfactory his services will be terminated without any notice.***

***4. He is liable to be transferred to any Jail in the province of Sindh or in any other Department under Provincial or Federal Government.***

**5. If he wishes to resign he will give one month's notice or to forego one month's pay with allowances in lieu thereof.**

**6. His appointment is subject to medical fitness by the authored Medical attendant and verification of Character and antecedents by the Police agencies.**

**7. He shall declare his assets and produce a certificate of good Character from any officer of B-17 within a fortnight from the date of joining the post.**

**He will be governed by the West Pakistan Prison Department (Assistant Superintendent of Jails) Service Rules 1962 the Sindh Civil Servants Act 1973 and Rules made there under:-**

**(M.K.Panhwar)  
Inspector General of Prisons  
Sindh Hyderabad**

11. Upon perusal of above order, we have noticed that appointment of the petitioner as Assistant Superintendent in Sindh Prison Department is/was made upon the recommendation of a politician, namely Mir Haider Ali Khan Talpur, MPA which is available at page 35 of the memo of the petition). Prima facie the appointment of the petitioner as Assistant Superintendent in BPS-11 was politically sponsored and even otherwise the said appointment was against a suspension vacancy, meaning thereby that no clear vacancy was available. Prima-facie the said appointment was against the norms of natural course and deviation from recruitment/service rules and procedures. We have also gone through the West Pakistan Prisons Department (Assistant Superintendent of Jails) Service Rules, 1962 and the West Pakistan Prisons Service (Class II) Rules 1962. The Home Department, Government of Sindh vide Notification dated 29<sup>th</sup> May 2015 also prescribed the qualification for the post in Sindh Prisons and the method of recruitment. The petitioner has claimed that he had passed Intermediate Examination on 17.08.1983 and qualified for the post of Assistant Superintendent Prison in BPS-11; but position of the Rules is

quite different as is evident from Section 7 of the West Pakistan Prison Service (Class II) Rules, 1962, reproduced below:-

***“7. Qualification--- (1) No person shall be appointed to a post in the Service by initial recruitment unless he is a graduate from a recognized University.”***

12. In the present proceedings, the case of the petitioner is for regularization of his Adhoc service as Assistant Superintendent Prison in BPS-11 now in BPS-16. As per record the petitioner continued to serve the department without regularization of his service and now he has crossed the age of 56 years and the respondent department allowed him to continue without any lawful justification. The learned Counsel for the petitioner has emphasized that the petitioner is entitled to the beneficial legislation as discussed supra.

13. We are of considered view that the case of the petitioner for regularization of his adhoc appointment does not involve any complicated question; but, a simple issue that he does not possess basic educational qualification prescribed for the post of Assistant Superintendent Prisons (BPS-16). In our view by virtue of his adhoc appointment no vested right in terms educational qualification accrued to him to claim regularization on the basis of Intermediate degree. Besides, his initial appointment in year 1987 was also found to be in violation of prescribed procedure and non-transparent manner and he is not entitled to regularization on this account also.

14. During the course of arguments, we asked the learned Counsel for the petitioner to answer whether the Petitioner's appointments as Assistant Superintendent Prison in BPS-11 on adhoc basis against a

suspension vacancy till reinstatement of the concerned official was in accordance with law? He submitted that the petitioner has been non-suited on a technicality and made submissions on the merits of the case. The learned Counsel referred to section 3 of Sindh Civil Servants (Regularization of Adhoc Appointments) Act, 1989 and section 3 of Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, which allow an employee appointed on Adhoc and contract basis or otherwise 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 or its project in connection with the affairs of the Province, immediately before commencement of this Act, shall be deemed to have been validly appointed on regular basis.

15. To appreciate the plea taken by the petitioner, we have to refer to Sindh Civil Servants (Regularization of Adhoc Appointments) Act, 1989, promulgated on 04.05.1989. The aforesaid enactment provides for regularization of the services of certain civil servants appointed on adhoc basis and as per the definition clause the "post" means a post sanctioned by Government connected with the affairs of the province, but in the present proceedings no sanctioned or substantive post of Assistant Superintendent Prison in BPS-11 was available to be filled on Adhoc basis at that point of time. We are of considered view that the foundation i.e. appointment of the petitioner against the aforesaid post was illegal; therefore the question of regularization of his service does not arise. We are further fortified by Rule 10(1) and (2) of the Sindh Civil Servants (Probation, Confirmation & Seniority) Rules, 1975, which provides as under: -

**“10 (1) subject to the provision of rule 11, the seniority of a civil servant shall be reckoned from the date of his regular appointment.**

**(2) No appointment made on adhoc basis shall be regularized retrospectively.”**

16. The above provision of law clarifies the legal proposition that the seniority of the civil servant shall be reckoned from the date of his regular appointment. We are of the considered view that the case of the petitioner does not fall within the ambit of Section 3 of the Act, an excerpt of the same is reproduced hereunder:-

***(3) Regularization of services of certain civil servants.***

***(1) Notwithstanding anything contained in the Act or rules thereunder or in any decree order or judgment of a Court but subject to other provisions of this Act a civil servant holding adhoc appointment against post on or before the 12<sup>th</sup> day of October, 1988 and continuing as such till the commencement of this Act, shall, on orders made in that behalf be deemed to have been validly appointed of that post on regular basis with effect from the date of the commencement of this Act.***

***(2) The orders under subsection (1) shall not be made unless antecedents of such civil servants, with regard to his academic qualifications, experience, age and place of domicile are scrutinized and cleared by a Special Committee appointed by Government.***

***(3) The Special Committee under subsection (2) shall be headed by the Secretary in charge of the Department concerned and amongst others shall consist of a representative each from that Department and the Services and General Administration Department.***

17. In order to further elaborate the issue of adhoc appointment, we refer to Section 2(a) of the Sindh Civil Servants Act, 1973 which reads as under: -

**(a) “adhoc appointment” means appointment of a duly qualified person made otherwise than in accordance with**

**the prescribed method of recruitment, pending the recruitment in accordance with such method”**

18. In view of the forgoing we cannot accept that the Petitioner was a qualified person at the time of his initial appointment in the year 1987 for the simple reason that as he did not meet the basic criteria of appointment against the post of Assistant Superintendent Prison in BPS-11 as provided under Sindh Civil Servants Act, 1973 and Rules framed thereunder as the petitioner was not working against the sanctioned budgetary post but on a suspension vacancy, and could not be termed to be appointed on a regular basis which could be recognized by the law. In the above context, we refer to Sub-Section (4) of Section 8 of the Sindh Civil Servants Act, 1973. Thus, the question of regularization as claimed by the Petitioner is misconceived.

19. Now, we would like to address the question raised by the learned counsel for the Petitioner with respect to the applicability of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013. In our view prima-facie this Act does not seem to be applicable to the facts and circumstances of the present case of the Petitioner, as this Act 2013 is relevant for those employees, who held the posts in Government Department and includes the post in a Project of such Department in connection with the affairs of the Province. Therefore the Petitioner is not entitled to the benefit of the aforesaid Act also.

20. The second pivotal question that has been raised in the present proceedings is as under:-

**i) Whether the case of the petitioner is at par with Mr. Syed Shakir shah, Assistant Superintendent, Mr. Ali Bux Shaikh, Assistant Superintendent, Mr. Muhammad Hassan Sahto,**

**Assistant Superintendent, Mr. Mohammad Aslam Malik, Assistant Superintendent and Mr. Abdul Razzak Abbasi, Assistant Superintendent who having similar fact as that of petitioner had been regularized in the service under the above provisions of the Act?**

21. As regards the question of regularization of the Petitioners' colleague namely Mr. Syed Shakir Shah, Assistant Superintendent, Mr. Ali Bux Shaikh, Assistant Superintendent, Mr. Muhammad Hassan Sahto, Assistant Superintendent, Mr. Mohammad Aslam Malik, Assistant Superintendent and Mr. Abdul Razzak Abbasi, Assistant Superintendent, is concerned, we refrain ourselves to dilate upon their cases at this juncture as they are not a party in the present proceedings, therefore no benefit of their case can be given to the Petitioner.

22. As per the West Pakistan Prisons Service (Class II) Rules 1962, and Notification dated 29.05.2015 issued by the Government of Sindh Home Department, the post of Assistant Superintendent of Prison in BPS-16 is a regular service post and can be filled in the following manner:-

S.No	Name of Post with BS	Method of Appointment	Minimum Academic Qualification Experience for Initial Appointment	Age Limit Min-Max
6	Assistant Superintendent of Prisons (BPS-16). Male/ Female	(i) Fifty percent by initial appointment through Sindh Public Service Commission.	<p><u>Graduate Degree atleast in Second Division from a recognized University.</u></p> <p><u>Height</u>  <u>Male:</u>            " Minimum girth of chest 78 cm with expansion of 3 cm"  <u>Female:</u>            "Minimum 01 Meter 70 cm"            Vision 6/6 both eyes.</p> <p>(ii) Twenty five percent by promotion from amongst the Assistants (BPS-14) or Head Clerk (BPS-14) with minimum five years successfully undergone the prescribed training course on seniority-cum-fitness basis.</p> <p>(iii) Twenty five percent by promotion from amongst the Assistant Sub-Inspectors Prison (BPS-09) having atleast five years service as such and having successfully undergone the prescribed training course on senior-cum-fitness basis.</p> <p>(iv) Advance Promotion "course at National Academy for Prisons Administration (NAPRA) Lahore or Sindh Prisons Staff Training Institute at NARA, Hyderabad</p>	21-28

23. The aforesaid recruitment rules clearly depict that the post of Assistant Superintendent of Prison in BPS-16 can be filled in the aforesaid manner through competitive process and by promotion on seniority-cum-fitness basis. Admittedly, the Petitioner has not been declared successful candidate by the Sindh Public Service Commission therefore; he cannot claim regularization of his service as a matter of right. The appointment of the Petitioner, if any, made by the Respondents for the post of Assistant Superintendent of Prison in BPS-16 is in violation of law which cannot be given sanctity. We are of the view the qualification viz age, experience and Physical Standards for the post of Assistant Superintendent of Prison in BPS-16 cannot be relaxed under Recruitment Rules on any pretext and have to be compulsorily complied with.

24. In view of the foregoing, we are of the considered view that the Petitioner was appointed as Assistant Superintendent of Prison without recourse to the provisions contained in the Sindh Civil Servant (Appointment, Promotion and Transfer Rules, 1974. It is a well settled law that aforesaid post can only be filled after advertisement and fulfillment of all codal formalities; therefore no sanctity can be attached to the appointment of the Petitioner as Assistant Superintendent of Prison on Adhoc basis, which is a regular service post. It is also a well settled law that any candidate has, however, a right to be considered along with other eligible candidates for ad hoc appointment in the substantive vacancy if he possesses the requisite qualifications.



25. In the present case, there is no material placed before us by which we can conclude that the competent authority wrongly exercised the discretion by declining to regularize the service of the Petitioner.

26. The Honorable Supreme Court of Pakistan in the case of Ali Azhar Khan Baloch V.S Province of Sindh (2015 SCMR 456) has held at paragraph No 188 as under:-

**“188. The background of the notification of 07.05.2013 of the Sindh Government was that during the hearing of the arguments in C.P.No.71/2011 and other Petitions in Criminal Original Petition No. 89-K of 2011, two CMAs numbered as 245/2013 and 247/2013 were filed, complaining that the Sindh Government had appointed 10 D.S.Ps without observing requisite Codal formalities. On 06.05.2013, this Court enquired from the Additional Advocate General Sindh, representing the Sindh Government, to satisfy the Court as to how the Sindh Government could appoint D.S.Ps without recourse to the procedure prescribed under the service law. The Additional Advocate General sought time for instructions and on the following day, he made a statement that all the D.S.Ps appointed directly, including the Petitioner, have been de-notified by notification dated 07.05.2013.”**

27. Summing up our conclusions in the light of the discussions in the foregoing paragraphs, we hold that petitioner appointed by the Respondents on ad hoc basis on a short term vacancy /suspension vacancy), (on death of the permanent incumbent), cannot claim a right to be regularized or even to remain in the service being appointed in a wholly illegal manner. We are fortified by the decision rendered by the Honorable Supreme Court of Pakistan in the case of Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456) has held at paragraph No 198 as under:-

***“The Sindh Government and or the Competent Authority cannot bypass this mandatory requirement and substitute a parallel mechanism to appoint a person in BS.16 to 22 against the language of these Rules, which are framed under the dictates of the Act as mandated under Article 240 of the Constitution. The Article 242 of the Constitution provides the mechanism for appointment of a Civil Servant through Public Service Commission. This Article is safety valve which ensures the transparent process of induction in the Civil Service. It provides appointment by Public Service Commission with the sole object that meritorious candidates join Civil Service. The Sindh Government through executive or legislative instruments cannot withdrawn any post from the purview of the Public Service Commission as has been done in the case of the petitioners, in negation to the command of Article 242 of the Constitution. For the aforesaid reasons, we hold that the Sindh Government shall make all the appointments in BS 16 to 22 through Public Service Commission.”***

28. It is now well established that Article 199 of the Constitution casts an obligation on the High Court to act in the aid of law and protect the rights within the frame work of the Constitution. This extra ordinary jurisdiction of the High Court may be invoked to encounter and collide with extraordinary situation. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the object to foster justice in aid of justice and not to perpetuate injustice. However, if it is found that substantial justice has been done between the parties then this discretion may not be exercised. Reliance is placed on the case of Muslim Commercial Bank Ltd. through Attorney Vs. Abdul Waheed Abro and 2 others (2015 PLC 259).

29. The case law cited by the learned counsel for the Petitioner are quite distinguishable from the facts and circumstances of the case.

30. In the light of above observation of the Honorable Supreme Court, the Petitioner has failed to establish that he has any

fundamental/vested right to remain on the Adhoc post or claim regularization of his service on the subject post which is not to be filled on Adhoc basis. Reliance is placed upon the case of Contempt Proceedings against Chief Secretary and others (2013 SCMR 1752). Before parting with the judgment we would like to observe that since we have opined that the very appointment of the Petitioner was illegal what to say of his regularization the department would be at liberty to proceed against the Petitioner in the light of the directions made supra strictly in accordance with law.

31. In view of the foregoing, the Constitutional Petition in hand is dismissed, with no order as to cost, along with the listed application(s).

Karachi  
Dated: 05 .09.2018

JUDGE

JUDGE