

IN THE HIGH COURT OF SINDH KARACHI  
**Constitutional Petition No.D –830 of 2014 a/w  
D-1414 of 2014, D-1435 of 2018,  
D-6368 of 2018 and D-4431 of 2019**

Date	Order with Signature of Judge(s)
------	----------------------------------

Before:  
Mr. Justice Irfan Saadat Khan  
Mr. Justice Adnan-ul-Karim Memon

Sohail & others,  
Petitioners in C.Ps No. D-830/2014,  
1414/2014 and 1435/2018 through : M/s Syed Haider Imam Rizvi  
Syed Ahsan Imam Rizvi and  
Sanaullah, advocates.

Muhammad Ishtiaq & others  
Petitioners in C.P. No. D-6368/2018. : Mr. Shujauddin, advocate.

Pakistan National Shipping  
Corporation / Respondent  
in C.Ps. No. D-1414/2014,  
1435/2018 and 6368/2018  
through : M/s Chaudhry Muhammad Ashraf  
Khan, Aamer Latif and Abdul  
Ghaffar, advocates.

Pakistan National Shipping  
Corporation / Respondent  
in C.Ps No. D-830/2014 and  
1414/2014 through : M/s Sufiyan Zaman and Munib  
Kidwai, advocates along with Mr.  
Zafarullah Khan, General Manager  
(Legal), PNSC.

Federation of Pakistan /  
Respondent through : Mr. Muhammad Nishat Warsi, DAG.

Dates of hearing : 08.04.2021, 06.05.2021 &  
19.05.2021

---

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

**ADNAN-UL-KARIM MEMON, J.** – Through these petitions, the petitioners are seeking regularization of their services in the respondent / Pakistan National Shipping Corporation (PNSC) from the dates of their initial appointments with all consequential relief(s) of payments of arrears and promotions. Since the facts and law points are common, all the petitions are being disposed of by this common judgment.

2. Precisely, the facts of the case as mentioned in the instant petitions are that the petitioners were appointed in PNSC on different dates on different posts and they are performing their contractual obligations against the different contract letters issued by the respondent No.2 / PNSC. That the petitioners approached this Court for regularization of their services in terms of the decision dated 01.02.2012 of Cabinet Division regarding regularization of contractual, as well as daily wages employees, who have completed one year and nine months of service respectively (Page 1489).

3. M/s Syed Haider Imam Rizvi learned counsel for the petitioners assisted by Syed Ahsan Imam Rizvi and M/s Sanullah and Shujauddin advocate for the petitioners have mainly argued that the Federal cabinet in its meeting held on 01.02.2012 and subsequent meetings decided to regularize contract staffs of all Ministry / Division / attached Department / Sub-ordinate offices, but the respondent-PNSC failed and neglected to act upon the decision of the cabinet. They claimed that the services of the petitioners ought to have been regularized in terms of the decision of the cabinet, as discussed supra. The petitioners being aggrieved by and dissatisfied with the inaction on the part of respondent-PNSC have filed the instant petitions inter-alia on the ground that they were appointed in the year 2006 and onwards on duly sanctioned and permanent Posts of Officer grade (IX & X), through a competitive process under the procedure prescribed by PNSC Service Regulations, 1984; they had been carrying out duties, functions, and assignments of a permanent nature for more than fifteen years and, as such, they had legitimate expectations of being absorbed as permanent employees in the PNSC. Mr. Haider Imam referred to Section 24-A of the General Clauses Act, 1897, and submitted that the respondent-PNSC was required to exercise its discretionary powers in a fair, reasonable, and transparent manner. On the maintainability of the instant petitions, he relied on the case of Muhammad Rafi vs. CAA and others, 2016 SCMR 314, and argued that the instant petitions are maintainable under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, on the premise that the respondent-PNSC is a state-owned organization, and submitted that the respondent-PNSC had agreed to give the same treatment to the petitioners as was given to other employees who were permanently taken on regular service. He also referred to the case of M/S State Oil Company Limited v. Bakht Siddique and others, 2018 SCMR 1181, and argued that though the regularization of service is not a part of the terms and conditions of service, the petitioners have sufficient length of service to claim regularization of their

service on the premise that they have given their prime time to the respondent-PNSC. Learned counsel pointed out that on the very subject the Honorable Supreme Court has already dealt with similar matters in its various pronouncements and the case of the petitioners is akin to the one decided in those decisions. He further argued that it is the fundamental right of the petitioners to ask for regularization of their services which right is guaranteed by Article 9 of the Constitution, which includes the right to livelihood as the same rule has been laid down by the Honorable Supreme Court in the case of Abdul Wahab and others v. HBL and other, 2013 SCMR 1383, by holding that the right to sustenance cannot cling to the fantasies of persons in authority. Learned counsel emphasized that the petitioners provided services for a considerable period and therefore acquired the right to be continued as permanent employees, till their services are formally regularized. He asserted that the career of the petitioners has become paralyzed at the hands of the respondent-PNSC, for the reason that they are now unable to get private services, if removed from their respective services. Learned counsel referred to various documents attached to the memo of the petitions as well as orders passed by this Court in the aforesaid proceedings and further argued that they are also entitled to pension under the Civil Service Regulation (CSR) as they have served with the respondent-PNSC for more than fifteen (15) years. He argued that the respondent-PNSC has regularized many identically placed employees and many other similarly placed employees have continued on permanent basis; that the respondent-PNSC has failed to extend the benefit of the decision of Subcommittee of cabinet, as discussed supra, whereby, all ministries/divisions/autonomous bodies were directed to regularize employees working on contract basis and the respondents regularized many employees in compliance of the decision of the cabinet's sub-committee, yet the petitioners have been ignored without any rhyme or reason; that the act of the respondents tantamounts to infringement of inalienable and fundamental rights, as enshrined under Articles 3,4,9,18 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973, and, the respondents are violating the fundamental principles of good governance, which envisages that terms and conditions of employment must be certain and protected for the obvious reason that it directly affects the efficiency of the employee; and, that instead of treating the petitioners as a regular employee and/or considering the petitioners for regularization, the respondents are bent upon to treat them arbitrarily and in a mechanical manner and appoint the persons of their choice on the posts on which the petitioners are entitled to be regularized. He concluded

his submissions by saying that these petitions may be allowed as prayed. In support of his contentions, he relied upon the cases of Board of Intermediate and Secondary Education, D.G Khan and others v Muhammad Altaf and other (2018 SCMR 325), Abdul Ghafoor and others v. The President National Bank of Pakistan (2018 SCMR 157), Syed Faisal Ali and 16 others v. Federation of Pakistan and 4 othes (2019 PLC (CS) 751), Kamran Ahmed Mallah and others v. Federation of Pakistan and others (2019 PLC (CS) 41), Aurangzeb and others v. Federation of Pakistan and 7 others (2020 PLC (CS) 599), Board of Intermediate and Secondary Education Multan through Chairman and another v. Muhammad Sajid and others (2019 SCMR 233), Dr. Iqbal Jan and others v. Province of Sindh and others (2014 PLC(CS) 1153). Ejaz Akbar Kasi and others v. Ministry of Information and Broad Costing 2011 PCS(CS) 357, Miss. Asma Lakho v. Province of Sindh and others (SBLR 2016 Sindh 61), Ikram Bari and others v. National Bank of Pakistan through President and others, 2005 PLC (C.S.) 915, and Pir Imran Sajid and others v. Managing Director / General Manager (Manager Finance) Telephone Industries of Pakistan and others, 2015 SCMR 1257.

4. M/s Chaudhry Muhammad Ashraf Khan, Abdul Ghaffar, and Sufiyan Zaman learned counsel for the respondent-PNSC, have refuted the averments and allegations made by the petitioners by referring to various documents attached with the memo of the petition and argued that the instant petitions are not maintainable against the respondent-PNSC under the law as the dispute between the parties relates to contract employment; the Honorable Supreme Court in its various pronouncements has settled the law that a contract employee is debarred from approaching this Court in its constitutional jurisdiction; and, the only remedy available to a contract employee is to file a Suit for damages, in case of breach of contract or failure thereof. It was urged by them that the petitions are liable to be dismissed in view of the above legal position. They further argued that PNSC is a statutory body formed under the Pakistan National Shipping Corporation Ordinance 1979 and the rules of service of the corporation have been formulated by the Board of Directors, framed as the Pakistan National Shipping Corporation (Service) Regulation 1984. Per learned counsel these regulations are non-statutory rules of service and the employment of the petitioners is not governed by the statute per se, hence, the master and servant rules are applicable in their case. They further argued that when the rules of non-statutory writ petition is not maintainable. Learned counsel also referred to the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance,

1968 and argued that no provision of the said ordinance applies to the respondent corporation. In support of their contention, they also referred to section 3 of the Ordinance 1979 and argued that petitioners are not entitled to a relief under any law for the time being in force. Per learned counsel the petitioners accepted the terms of contractual employment as such they are precluded to ask for regularization of their services in the light of Section 21 of the Ordinance 1979. Learned counsel further pointed out that the respondent corporation is a strategic corporation/entity as such contractual appointment could not be regularized in the light of various decisions pronounced by the Hon'ble Supreme Court on the subject issue. They lastly prayed that the instant petitions may be dismissed with exemplary cost as no case for regularization of their services has been made out. In support of the above contentions, the learned counsel for respondent No.2 has relied upon the cases of Naureen Naz Butt v. Pakistan International Airlines (2020 SCMR 1625), Government of Khyber Pakhtunkhwa v. Raheel Ali Gohar (2021 PLC C.S.) 125, the order passed in C.P. No. D-2666/2020 (Saeed Habib V/S National Bank of Pakistan), the order passed in Writ Petition No.1645/2020 (Taslim Mumtaz V/S National Bank of Pakistan, the order passed in C.P. No. D-5043/2015 (Samiullah Khan V/S National Bank of Pakistan, the order passed in C.P.2210-L/2020 to C.P.2239-L/2020 and CMA No.489-L/2021 (Province of Punjab V/S Javed Iqbal & others), the order passed in C.P No. D-6241/2016 (Anjum Badar V/S Province of Sindh & others), Pakistan National Shipping Corporation (Service) Regulations, 1984, the order passed in Writ Petition No.1502/2019 (Waqas Rafi Awan V/S National Engineering & Scientific Commission, Islamabad), Muhammad Mumtaz Javed v. Pakistan through Secretary Ministry of Communication (1988 PLC (C.S.) 705), R.T.H. Janjua v. National Shipping Corporation (PLD 1974 SC 146).

5. After arguing the matter at some length, Ch. Muhammad Ashraf Khan referred to the appointment letters of the petitioners and submitted that these contractual appointments are not time-bound thus their contractual service could be continued till the age of their superannuation. However, this proposal is not acceptable to the learned counsel for the petitioners on the grounds agitated by him in the preceding paragraphs. Ch. Muhammad Ashraf Khan further pointed out that the case-law referred by the learned counsel for the petitioners are distinguishable from the facts of the present petitions on the premise that the aforesaid decisions were emanating from the Labor Courts, whereas, the petitioners have failed and neglected to avail their remedy before a proper forum, as provided under the law, therefore, their case cannot be treated at par with the decisions rendered by the Hon'ble Supreme Court in the cases of Pakistan Steel,

PSO and NBP. Per learned counsel, the petitioners have failed to establish that as to which of the provision of the law for the employment or termination of the petitioner has been violated as in absence of the above, writ petition is not maintainable. He further pointed out that no fundamental rights of the petitioners have been violated and the forum available under Article 199 could not be enforced. In support of his contention, he relied upon the case of Ms Naureen Naz Butt v. PIA and others (2020 SCMR 1625) and Government of Khyber Pakhtunkhwa Worker Welfare Board v. Raheel Ali Gohar and others (2021 PLC (CS) 125). The aforesaid stance of the learned counsel for the respondents has been belied by the learned counsel for the petitioners as he reiterated his submission by referring to the grounds agitated in the memo of petitions and further argued that the respondent-corporation is earning quite hefty thus no loss would be caused if the petitioners are regularized, as they have been working on the respective posts since 2006 onwards.

6. We have heard the learned counsel for the parties on the issue of regularization of contractual service of the petitioners and have gone through the relevant documents brought on record and the case law cited at the bar.

7. The question involved in these cases relates to the regularization of service of an employee vis-à-vis service jurisprudence. The law on the subject is clear in its concept according to which regularization and permanent absorption must be granted strictly under the rules of recruitment in force. It is also well-settled law that contractual employees have no vested right to be regularized unless the same has specifically been provided under the terms and conditions of appointment/service and law.

8. We have perused the appointment orders of the petitioners, which were admittedly contractual appointments, however, no period has been disclosed for such assignments, and as per statement of the learned counsel representing the respondents-PNSC that their services are required to be continued till the age of superannuation of the petitioners, and they are required to do the needful. Be that as it may, on merits their contract does not contain a provision for regularization; therefore, this Court cannot issue a writ for regularization of their services on the aforesaid analogy. On the aforesaid proposition, we are fortified by the latest decision dated 16.07.2020 pronounced by the Hon'ble Supreme Court in Civil Appeal No.73 of 2020 in the case of Government of Khyber Pakhtunkhwa, Workers Welfare Board, through its Chairman versus

Raheel Ali Gohar and others (2021 PLC (CS) 125), and Chairman NADRA, Islamabad, and another v. Muhammad Ali Shah and others (2017 SCMR 1979).

9. In view of the above legal position of the case, principally, this Court, while exercising powers under Article 199 of the Constitution, cannot issue directions for regularization, absorption, or permanent continuance of service of an employee, unless the employee claiming regularization had been appointed in an open competitive process in pursuance of regular recruitment under the relevant rules, against a sanctioned vacant post. It is a well-settled principle of law that for public employment unless the appointment is in terms of the relevant rules and after a proper competition amongst qualified persons, the same would not confer any vested right on the appointee. If it is a contractual appointment, the appointment comes to an end upon expiration of the contract, and if it was an engagement or appointment on daily wages or casual basis, the same would come to an end upon the completion of the agreed assignment or tenure. It is well settled that a temporary employee cannot claim permanent status at the end of his term as a matter of right. It is clarified that if the original appointment was not made by following the due/prescribed process of selection as envisaged by the relevant rules, a temporary / contract employee or a casual wage worker cannot be absorbed in a regular service or made permanent merely for the reason that he was allowed to continue the service beyond the terms of his appointment. It is not open for this Court to allow regular recruitment in the case of a temporary / contract employee, whose period of work has come to an end, or of an ad-hoc employee who by the very nature of his designation, does not acquire any right. Merely because an employee had obtained an interim order of the Court, would not entitle him to any right to be absorbed or made permanent in the service without the mandatory lawful process.

10. In view of the above, the respondent-PNSC was well within its rights to dispense with the service of its employees after the expiry of their contract under the law. The General Clauses Act, 1897, also empowers the competent authority to appoint or remove anyone, appointed while exercising that power. In fact, in view of the legal position discussed above, the services of such contractual employees stood automatically dispensed upon expiration of their contract or any extension made therein or thereafter.

11. Having discussed the legal aspect of the case, in our view the case of the petitioners falls within the ambit of Master and Servant. It is well-established law that a contractual employee has no fundamental / acquired vested right to remain in the contractual post or to seek an extension and/or regularization of the contractual service. It is also a settled law that Courts ordinarily refrain from interfering in the policy-making domain of the Executives unless it is proven that it has infringed the fundamental rights of the citizens of Pakistan, which is not the case in hand.

12. In the present case, no material whatsoever has been placed before us through which we can conclude that it is for the respondents to decide the regularization of the service of the petitioners, however, subject to the law. In the present case, it may be noted that the learned counsel for the respondent-PNSC has agreed to allow the petitioners to serve till the age of superannuation on a contract basis, however, that would be for the respondents to decide on the subject issue within a reasonable time. The cases cited and relied upon by the learned counsel for the petitioners are not relevant or applicable to the instant case, as the facts and circumstances therein are quite distinguishable.

13. Adverting to the grounds raised by learned counsel for the petitioners, suffice it to say they accepted their respective posts with certain terms and conditions of their service, as such they are precluded under the law to claim extension or regularization of their contractual service, the reasons discussed supra are sufficient to discard their point of view.

14. The views expressed by us in the preceding paragraphs are fortified by the following authoritative pronouncements of the Hon'ble Supreme Court:

i. Government of Baluchistan V/S Dr. Zahida Kakar and 43 others, 2005 SCMR 642.

ii. Dr. Mubashir Ahmed V/S PTCL through Chairman, Islamabad, and another, 2007 PLC CS 737.

iii. Abid Iqbal Hafiz and others v. Secretary, Public Prosecution Department, Government of the Punjab, Lahore, and others, PLD 2010 Supreme Court 841.

iv. Federation of Pakistan v. Muhammad Azam Chattha, 2013 SCMR 120.

v. Muzafar Khan & others V/S Government of Pakistan & others, 2013 SCMR 304.



- vi. Abdul Wahab and others v. HBL and others, 2013 SCMR 1383.
- vii. Chairman NADRA, Islamabad through Chairman, Islamabad and another v. Muhammad Ali Shah and others, 2017 SCMR 1979.
- viii. Qazi Munir Ahmed Versus Rawalpindi Medical College and Allied Hospital through Principal and others, 2019 SCMR 648.
- ix. Raja Iviz Mehmood and another v. Federation of Pakistan through Secretary M/o Information Technology and Telecommunication and others, 2018 SCMR 162.
- x. Maj. (R) Syed Muhammad Tanveer Abbas and other connected Appeals, 2019 SCMR 984.
- xi. Unreported order dated 13.03.2019 passed by the Hon'ble Supreme Court in C.P. No.2792/2018 and other connected petitions.
- xii. Province of Punjab through Secretary Agriculture Department, Lahore, and others Vs. Muhammad Arif and others, 2020 SCMR 507.
- xiii. Miss Naureen Naz Butt vs Pakistan International Airlines and others, 2020 SCMR 1625.
- xiv. Government of Khyber Pakhtunkhwa, Workers Welfare Board, through its Chairman versus Raheel Ali Gohar and others (2021 PLC (CS) 125).
- xv. Unreported order dated 18.02.2021 passed by the Hon'ble Supreme Court in Civil Appeal No.936 and 937 of 2020.

15. In the light of the above facts and circumstances of the case, the instant petitions are dismissed along with all the listed and pending application(s), with no order as to costs.

JUDGE

JUDGE

Zahid\*