ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

Constitutional Petition No.D- 555 of 2021.

(Re. Mst. Islam Khatoon v. Province of Sindh & Ors)

DATEOFHEARING	ORDERWITH SIGNATRUEOFHON'BLE JUDGE

Before :

Mr. Justice Muhammad Saleem Jessar.
Mr. Justice Adnan-ul-Karim Memon.

Date of hearing & order: 13.02.2025.

Mr. Abid Hussain Qadri, advocate for the petitioner.

Mr. Liaquat Ali Shar, A.A.G assisted by Mr. Munwar Ali Abbasi, Asstt: A.G.

O R D E R

ADNAN-UL-KARIM MEMON- J.:- The petitioner Mst. Islam Khatoon requesting this Court to order the respondents to release her outstanding salary, gratuity, General Provident Fund (GPF), pension, Prime Minister's Fund benefits, insurance payments, and other retirement benefits on humanitarian grounds.

2. The petitioner's lawyer stated that the petitioner was appointed as a Lady Health Worker in the National Program for Family Planning and Primary Health, under the Prime Minister's Program in Sindh, at the Basic Health Unit Essa Khan Thebo, District Dadu, on November 27, 1994, on a daily wage basis. The Supreme Court of Pakistan ordered the regularization of her service, which was implemented in the year 2012. Upon reaching retirement age, she retired on November 14, 2018. The lawyer argues that, according to the Supreme Court's decision in Civil Appeal No.1072/2005 Re. *Chairman Pakistan Railways Vs. Shah Jehan Shah* **(PLD 2016 Supreme Court 534)**, submitted that the petitioner is entitled to pension benefits. He requested that the petition may be granted.

3. The Additional Advocate General (AAG) argued against the petitioner's claim, stating that the petition is not maintainable due to insufficient length

of service for pension eligibility. The AAG detailed the petitioner's employment history with the narration that Mst. Islam Khatoon Chandio was hired in 1994 as a Lady Health Worker under the Prime Minister's Program for Family Planning & Primary Health Care. Following legal action by LHWs, the Supreme Court of Pakistan ordered the regularization of services (February 6, 2013, in several consolidated petitions), effective July 1, 2012. Mrs. Chandio's services were subsequently regularized via an offer order dated September 19, 2014, also effective from July 1, 2012. Crucially, this order, based on a Council of Common Interest (CCI) decision, stipulated that pension liability would accrue only after ten years from the regularization date (i.e., July 1, 2022). Mrs. Chandio retired on November 14, 2018, upon reaching the superannuation age of 60. The AAG emphasized that, according to the Supreme Court's order and the CCI decision, Mrs. Chandio's pension eligibility wouldn't begin until July 1, 2022, after completion of 10 years of regular service. Therefore, she is not currently entitled to pension benefits. The AAG reiterated that the governing orders require ten years of service *from the date of regularization* for pension eligibility. The AAG concluded that Mrs. Chandio was aware of these terms but has nonetheless filed a petition, wasting the court's time. Because she did not complete the required ten years of service post-regularization before retiring, the AAG asserted that, based on Supreme Court decisions (Chairman Pakistan Railway v. Shah Jehan Shah, **PLD 2016 SC 534**, and *Ministry of Finance v. Syed Afroz Akhtar Rizvi*, **2021 SCMR 1546** contractual service can be considered for pension calculation *only* if the employee has already met the required qualifying service in a regular position. Article 371-A of the CSR, with its *non obstante* clause, only pertains to calculating the pension amount, not eligibility. It does not allow combining contractual and regular service to meet the qualifying period. Therefore, as the petitioner has to meet the criteria, she is not entitled to pension benefits at this stage. He lastly argues that her claim for terminal benefits (beyond the GP Fund) is without merit and should be dismissed.

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

5. The petitioner's official employment record only counted her service from her regularization date in 2012 as per Supreme Court order, not her initial contingent period starting in 1994. Since she retired in 2018, and her officially recognized service was less than the required 10 years, her claim for retirement benefits (excluding her accumulated GP Fund) was denied on the aforesaid analogy by the respondent department. Her lawyer argues that her service from 1994 to 2012 should be included, which would make her eligible for these benefits. Be that as it may, we are only concerned whether the petitioner has the requisite length of service i.e, 10 years as a regular service to claim the benefit of Article 371-A of the Civil Service Regulation (CSR).

6. A review of Article 371-A of the Civil Service Regulations shows that clause (i) states that government employees in temporary positions who have completed more than five years of *continuous* temporary service can count that service toward their pension or gratuity. The word "continuous" means that only uninterrupted service of more than five years counts; any prior periods of temporary service that were broken or interrupted are not included in the calculation. Clause (ii) addresses situations where a government servant has rendered less than five years of continuous temporary or officiating service. In these cases, the service period can still be counted towards pension or gratuity, but *only* if it is immediately followed by confirmation or regularization into a permanent position.

7. The case of *Chairman, Pakistan Railway, Government of Pakistan, Islamabad, and others v. Shah Jehan Shah* **(PLD 2016 Supreme Court 534)** involved the interpretation of Article 371-A of the Civil Service Regulations. The Supreme Court made certain observations regarding this article.

8. Analysis of these regulations and court judgments, particularly the recent *Shah Jahan Shah* case (*supra*), reveals the following general principles

regarding pension eligibility for employees whose contractual positions were later converted to regular posts. An employee initially hired on a contract basis and subsequently regularized *may* be entitled to pension benefits, provided: They meet the qualifying service period for a pension (10 years) *as a regular employee*. ii. For calculating pension benefits, their service as a contractual employee *can* be considered to determine any due financial benefits. iii. The periods of contractual and regular employment *cannot* be combined to determine pension *eligibility*. iv. Pension eligibility is directly tied to the qualifying service period as a *regular* employee. Unless an employee has served in a regular appointment for the required 10 years, they are not entitled to a pension.

9. It is well settled now that if an employee has served in a government department for the required time to qualify for a pension, their time spent as a contractual employee *may* be added to their regular qualifying service, but *only* for calculating the pension amount, and for no other reason. Article 371-A of the Civil Service Regulations begins with a non-obstante clause, meaning it doesn't address pension entitlement or eligibility. It specifically concerns counting a minimum of five years of temporary contractual service for the *sole* purpose of calculating the pension amount. The non-obstante clause in Article 371-A does *not* allow those who don't meet the pension qualification requirements to circumvent those conditions by combining their regular and contractual service to reach the ten-year eligibility threshold. Such an interpretation would be illogical and make other CSR provisions redundant, as observed by the Supreme Court in the aforesaid case. Therefore, it is clear that Article 371-A does *not* entitle government servants with more than five years of temporary service in a temporary establishment to a pension. Instead, that period can only be counted towards pension calculation *if* they otherwise meet the qualifying service criteria for a pension.

10. It is undisputed that the petitioner worked continuously from 1994 to 2018. It is also undisputed that she was regularized in 2012 as per Supreme Court order and retired in 2018, before fulfilling the qualifying service requirement for a

pension. Therefore, the benefit of Article 371-A of the Civil Service Regulations was/is not applicable to her case, as she did not meet the necessary pre-qualification for pension benefits.

11. It is important to note that a previous three-member bench ruling of the Supreme Court in *Mir Ahmad Khan v. Secretary to Government & others* (**1997 SCMR 1477**) was declared *per incuriam* (wrong in law) by a five-member bench in the *Shah Jahan Shah* case (*supra*). The consistent view of the Supreme Court now, regarding the conversion of contractual to regular employment, is that while contractual service (minimum five years) can be included in pension *calculations*, this applies *only* if the employee is *already* entitled/eligible for a pension due to having completed the qualifying service period (10 years) in *permanent* employment. Contractual service cannot be used to make up for any shortfall in the qualifying service period required for pension *eligibility*. The petitioner's view is incorrect and demonstrates a misunderstanding of the *Shah Jahan Shah* case, which is the authoritative legal precedent on this matter.

12. Based on Supreme Court decisions (Chairman Pakistan Railway v. Shah Jehan Shah, **PLD 2016 SC 534**, and Ministry of Finance v. Syed Afroz Akhtar Rizvi, **2021 SCMR 1546**), contractual service can be considered for pension calculation *only* if the employee has already met the required qualifying service in a regular position. Article 371-A of the CSR, with its *non-obstante* clause, only pertains to calculating the pension amount, not eligibility. It does not allow combining contractual and regular service to meet the qualifying period. Therefore, prima facie, the petitioner does not meet the criteria, as set forth in the judgments of the Supreme Court, and, as such she is not entitled to regular pension benefits, and the instant petition cannot be allowed.

13. In view of above facts and circumstances of the case, this petitioner is meritless and is dismissed accordingly.