

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
C. P. No.D-616 of 2024
(Gul Muhammad v. D.A.O, Jacobabad & Ors)

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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BEFORE:

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

Date of hearing and Order: 13.03.2025

Mr. Habibullah G. Ghouri, advocate for the petitioner.

Mr. Liaquat Ali Shar, Addl. A. G assisted by Mr. Aftab Ahmed
Bhutto, Asstt. A. G.

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ORDER

Adnan-ul-Karim Memon, J. The petitioner, a retired Deputy District Attorney (BS-18), requests this court to declare the respondents' denial of his pension illegal and to order the immediate release of his pension benefits, by counting his approximately 3 years contractual period in his regular 7 years' service.

2. The central issue is the petitioner's pension eligibility. As a retired Deputy District Attorney (BS-18), he asserts that his total service, including his contract period, meets the 10-year minimum. He relies on Supreme Court rulings and comparable cases to argue that the respondents' refusal to include his contract service is unlawful. He emphasized pensionable service of the petitioner starts from the initial appointment date, not regularization. He next argued that Article 371-A of the Civil Service Regulations (CSR) treats "temporary service" as including contractual service. Clause (i) of Article 371-A allows continuous temporary service exceeding five years to be counted towards pension, excluding any prior broken periods. Clause (ii) applies to service less than five years, which can also count if immediately followed by regularization. In this case, the petitioner's 3 years of contract service falls under clause (ii). Since the petitioner's contract was regularized in 2013, and his overall service was continuous, the contractual period must be included in pension calculations, as per established law and Article 371-A.

3. The petitioner was appointed as a Deputy District Attorney (BS-18) on contract basis on 14.05.2009, and his service was regularized on 24.03.2013

under Sindh Regularization of Contract Employees Act, 2013 with effect from the date of enactment i.e 25.03.2013. He retired in 2020. His contract period was more than 03 years, and his regular service was about 08 years, totaling over 11 years. However, his pension was denied because the respondents excluded his contract period.

4. According to the respondents, the petitioner does not qualify for a pension because his regular service is under 10 years, which counts from the date of his regularization of service, i.e, 25.03.2013. They cite specific pension rules and departmental policies that explicitly state contract service cannot be included in pension calculations and that service deficiencies of over a year cannot be waived. They further argue that only 10 years of regular service grants pension eligibility, and pray for the dismissal of the petition.

5. The Supreme Court in the case of Ministry of Finance Vs. Syed Afroz Akhtar Rizvi and others (2021 SCMR 1546) clarified that contract service can be added to regular service *solely* for pension calculation, provided the employee meets the basic pension eligibility requirements. Article 371-A of the Civil Service Regulations (CSR) only addresses how to calculate pension based on temporary/contract service, not eligibility. However, it does not allow those ineligible for pension to use contract service to meet the minimum service requirement. Therefore, temporary service in a temporary establishment, even exceeding five years, does not automatically grant a pension; it is only considered for calculation if the employee independently qualifies for a pension. Following the Supreme Court's interpretation of Article 371-A of the Civil Service Regulations, contract service can only be used to calculate pension amounts. It does not contribute to the required ten years of qualifying service.

6. However, the latest view of the Supreme Court, on the subject issue, in the case of Chairman/Dean Sheikh Zayed Hospital Vs Amjad Mehmood Khan 2025 SCMR 168 is as under:—

“Thus, the law is clear that the contractual period, being temporary service, is recognized by Article 371-A of the CSR for inclusion in the calculation of pension provided that the contractual period is followed by regularization or confirmation without any gap or interruption, in accordance with clause (ii) of Article 371-A of the CSR. Therefore, the Federal Service Tribunal has rightly allowed the appeal of the respondent. 15. In view thereof, we find that the impugned judgment is well-reasoned and has considered all legal and factual aspects of the matter. The petitioner has failed to make out a case warranting any interference. Consequently, this petition, being devoid of merit, is dismissed and leave refused.”

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

8. 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.

9. According to recent Supreme Court rulings (Chairman/Dean Sheikh Zayed Hospital Vs Amjad Mehmood Khan and Ministry of Finance v. Syed Afroz Akhtar Rizvi), supra, contractual service can only be included in pension calculations if the employee has already independently met the minimum qualifying service in a regular position. Article 371-A of the CSR pertains solely to pension calculation, not eligibility, and does not permit combining contractual and regular service to achieve the required service period. The petitioner's case is remanded to the respondent department for reconsideration regarding the inclusion of contractual service within regular service, following the aforementioned Supreme Court judgments. The respondent's competent authority is directed to decide the pension issue of the petitioner within one month, after providing the petitioner with a hearing.

10. In view of the above facts and circumstances of the case, this petition is disposed of in the above terms.

JUDGE
13/13/2025