

**IN HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

C.P No.D-583 of 2016

[Mst. Shazia v. The Province of Sindh & others]

C.P No.D-584 of 2016

[Mst. Tahira Mukhtiar v. The Province of Sindh & others]

C.P No.D-587 of 2016

[Mst. Noureen v. The Province of Sindh & others]

Before:

Mr. Justice Arbab Ali Hakro

Mr. Justice Riazat Ali Sahar

Petitioners:

Mst. Shazia [C.P. No.D-583 of 2016] through Mr. Muhammad Iqbal Qassar, Advocate.

Mst. Tahira Mukhtiar [C.P. No.D-584 of 2016] and **Mst. Noureen** [C.P. No.D-587 of 2016] through Mr. Imran Qureshi, Advocate.

Respondents:

The Province of Sindh & others through Mr. Rafique Ahmed Dahri, Assistant A.G. Sindh.

Dates of Hearing :

08.05.2025

Date of Decision :

08.08.2025

JUDGMENT

RIAZAT ALI SAHAR. J., - As the petitions at hand involve identical questions of law and facts arising from the same set of circumstances and the controversy raised therein are substantially

the same, as such, for the sake of convenience and to avoid conflicting findings, we deem it appropriate to decide them collectively. Accordingly, all the captioned petitions have been heard together and are being disposed of through this common judgment.

2. The petitioners, through these connected constitutional petitions, have asserted that they were appointed as Headmistress (CMS) (BPS-11) at various Government Girls Community Model Schools on a purely contractual basis for a period of three years. The details of their respective appointments are as follows:

- Mst. Shazia: Offer letter dated 20.10.2011; appointment letter dated 22.10.2011; physical fitness certificate obtained on the same date. She assumed charge as Headmistress (CMS) (BPS-11) at Government Girls Community Model School, Mir Hassan Rind, Taluka Sakrand, District Shaheed Benazirabad, on 22.10.2011.
- Mst. Tahira Mukhtiar: Offer letter dated 13.05.2011; appointment letter dated 28.06.2011; physical fitness certificate obtained on the same date. She assumed charge as Headmistress (CMS) (BPS-11) at Government Girls Community Model School, Jalalani, Taluka Sakrand, District Shaheed Benazirabad, on 23.09.2011.
- Mst. Noureen: Offer letter dated 13.05.2011; appointment letter dated 30.06.2011; physical fitness certificate obtained on the same date. She assumed charge as Headmistress (CMS) (BPS-11) at Government Girls Community Model School, Janib

Jamali, Taluka and District Shaheed Benazirabad, on
24.08.2011.

3. The petitioners have stressed that since their initial appointments in 2011, they have been continuously discharging their duties against the said posts. They claimed that their entire service record has been spotless, unblemished and faultless and that they enjoy a reputation for being honest and efficient officers. Copies of their Service Books have been annexed with the petitions to substantiate these assertions.

4. The petitioners further contended that despite their continuous service since 2011, their salaries were abruptly stopped after July 2015 by the respondents without any lawful justification. According to them, they have been performing duties against permanent posts and by virtue of such long-standing service; they are entitled to be treated as regular employees. They have also alleged that they have been subjected to verbal threats of termination, causing not only professional embarrassment but also mental distress to them and their families. They have further pleaded that under the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 (hereinafter referred to as “**Act of 2013**”) and in light of authoritative judgments of the Honourable Superior Courts, including **2005 SCMR 100, 2013 SCMR 1547, SBLR 2015 Sindh 186, SBLR 2015 Sindh 204, 2015 PLC (CS) 293, and 2015 PLC (CS) 690**, their services are liable to be regularized from the dates of their initial appointments. The petitioners have also referred to the policy stance of the Government of Sindh, which, according to

them, had publicly assured that no employee would be ousted from service as the policy of the Government is to provide employment rather than to create unemployment. However, contrary to such policy, the subordinate officers of the respondents are allegedly acting in defiance of the said Government instructions by failing to refer their cases to the Committee constituted on 16.09.2014 for regularization of contractual employees. Instead, the respondents had allegedly been resorting to delaying tactics and blackmailing.

5. The petitioners have also averred that they belong to poor and respectable families with meager sources of income and that non-regularization of their services would cause severe financial hardship in these times of rising inflation and high cost of living. They have alleged that the respondents are acting with malice in fact and in law, which is aimed at risking their careers. Such conduct, according to them, amounts to discrimination and discouragement of honest public servants, which is inconsistent with the constitutional guarantee of equality and the principles of a fair and egalitarian society. They have claimed that as citizens of Pakistan, they have an absolute right to be treated strictly in accordance with law under the Constitution of the Islamic Republic of Pakistan.

6. In view of the foregoing, the petitioners have prayed that this Court may be pleased to direct the respondents to regularize their services as Headmistress (CMS) (BPS-11) in terms of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013; restrain the respondents from terminating their services in any manner and without lawful justification until final adjudication of

these petitions; and, pass such other order or grant such further relief as this Court may deem just and proper in the circumstances of the case.

7. Pursuant to the notice of this Court, respondents No.3, 4, 5, and 6 filed their respective comments. In C.P. No.D-583 of 2016, respondents No.4 and 5 submitted a joint written statement wherein they confirmed that petitioner Mst. Shazia was appointed as Headmistress (BPS-11) at Government Girls Community Model School, Mir Hassan Rind, Taluka Sakrand, on 22.10.2011 purely on a contractual basis for a period of three years under the Girls Primary Education Development Project "GPEDP" Education and Literacy Department. They asserted that her contract expired on 21.10.2014 and consequent upon such expiry, her salary was stopped. It was further stated that the petitioner is neither performing duties nor is an employee of the School Education Department. Respondents No.4 and 5 filed a similar joint written statement in respect of C.P. No.D-584 of 2016 (petition of Mst. Tahira Mukhtiar).

8. In C.P. No.D-584 of 2016, respondent No.5 raised preliminary objections challenging the maintainability of the petition. He contended that the petition is barred under Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973, as the appropriate remedy lies before the Sindh Service Tribunal. Respondent No.5 further asserted that, as per the petitioners' own averments, the orders of stoppage of salaries remained unchallenged for more than eight months before filing the present petition. He contended that, being civil servants, the petitioners had the

statutory remedy of preferring a departmental appeal and thereafter, a service appeal before the Sindh Service Tribunal within the prescribed period, which they failed to avail. He also stressed that under Rule 3 of the Sindh Civil Servants (Appeal) Rules, 1980, a civil servant aggrieved by any order relating to the terms and conditions of service is required to prefer an appeal within 30 days from the date of such order. Without prejudice to these legal objections, he contended that the petitioner was appointed purely on contract basis under the Middle School Project as an untrained teacher for a specific period and upon expiry of the contractual term, she stood relieved and relinquished her charge. The terms and conditions of her appointment did not permit any extension in the contract period; hence, the stoppage of salary was justified.

9. Respondent No.5 further contended that three rounds of merit-based appointments had been conducted—through IBA and NTS under the Recruitment Policy, 2012—and the petitioner was required to participate in these merit-based processes for regular appointment but failed to do so. Therefore, her claim for regularization was not sustainable. Accordingly, dismissal of the petition was prayed for. Respondent No.5 filed similar preliminary objections in C.P. No.D-587 of 2016 (petition of Mst. Noureen).

10. Respondent No.6, District Accounts Officer, filed his comments stating against each paragraph of the petitions only “No comments” and prayed that this Court may consider the petitions on their own merits and issue appropriate orders for compliance by all concerned.

11. Learned counsel for the petitioners contended that the petitioners were appointed after fulfilling all codal formalities, including advertisement, verification of educational credentials, and selection by the competent authority. Their continuous service since 2011, with unblemished records, establishes that they were appointed against permanent sanctioned posts rather than temporary project-based positions. They have contended that under Section 3 of the Act of 2013, all employees appointed on a Contractual or Adhoc basis, who were in service immediately before commencement of the Act, are deemed to have been validly appointed on a regular basis and the petitioners squarely fall within the ambit of this provision, as they were performing duties at the time of the enforcement of the Act of 2013 in March 2013 and even thereafter. Counsel further contended that despite the enactment of the Act and constitution of Scrutiny Committees through Notification dated 16.09.2014, the respondents failed to refer the petitioners' cases for scrutiny, which constitutes *mala fide* and discrimination. They contended that the Government's own policy promises job security and discourages arbitrary termination and the failure to regularize their services violates Articles 4, 9 and 25 of the Constitution and the continued payment of salaries even after expiry of the contractual term and certification of attendance by Head Mistresses and SMC members clearly reflect acceptance of their services by the respondents, creating a legitimate expectation for regularization. They relied upon **2005 SCMR 100**, **2013 SCMR 1547**, and **SBLR 2015 Sindh 204**, wherein regularization was

ordered in similar circumstances. Learned counsel for the petitioners have further contended that the respondents cannot simultaneously disown petitioners as contractual employees while objecting to maintainability of constitutional petitions by treating them as civil servants and such contradictory stance exposes arbitrariness and violates the principle of fairness; thus, in terms of the Act of 2013, the petitioners are entitled to regularization from the dates of their initial appointments.

12. Conversely, learned A.A.G. Sindh has contended that the petitioners were appointed strictly on a project basis under GPEDP/Middle School Project for a fixed contractual term, which expired in 2014 and no extension was permissible under the terms of their appointment and their continued presence in schools after expiry of contract cannot create any vested right for regularization. He contended that the Act of 2013 is not applicable to employees whose appointments were project-based and for a specific duration; the legislative intent was to regularize only those serving against permanent sanctioned posts. He has also contended that the petitions are barred under Article 212 of the Constitution, as the petitioners, if considered civil servants, ought to have approached the Sindh Service Tribunal by filing a departmental appeal within the statutory period and their failure to avail such remedy renders the petitions not maintainable. Lastly, he has further contended that legitimate expectations or continuation beyond the contractual term cannot override explicit terms of the contract or statutory provisions; therefore, the petitions may be dismissed.

13. We have carefully considered the submissions advanced by the learned counsel for the petitioners and the learned A.A.G. Sindh, examined the relevant provisions of law and perused the material available on record, including the appointment orders, service records, salary slips and attendance registers submitted by the petitioners.

14. Meticulous scrutiny of the record reflects that the petitioners were initially appointed strictly on a contractual basis for a fixed tenure of three years. It is undisputed that Mst. Shazia assumed charge on 22.10.2011, Mst. Tahira Mukhtiar on 28.06.2011 and Mst. Noureen on 24.08.2011, with their contractual terms expiring on 21.10.2014, 27.06.2014 and 23.08.2014, respectively. However, it is equally established from the salary slips placed on record that they were paid salaries up to July 2015, and their attendance certificates, duly signed by the Head Mistresses and countersigned by the Chairmen of the respective School Management Committees confirm that they continued to discharge their duties even beyond the contractual tenure. Significantly, the respondents have not specifically denied these documents, which amounts to an implied admission.

15. The objection of the respondents that the petitioners' services were neither extended, nor required after expiry of the contractual term stands falsified by the official record itself, which clearly demonstrates that they were permitted to continue in service and remunerated for several months beyond the contractual period.

Such conduct of the respondents amounts to acknowledgment of their continued service and creates a legitimate expectation in favour of the petitioners.

16. The preliminary objection raised regarding maintainability of these constitutional petitions under Article 199 of the Constitution also fails to merit consideration. The respondents have taken mutually critical stands: on the one hand, disowning the petitioners as employees after expiry of the contractual period and on the other, treating them as civil servants to argue that the petitions are barred under Article 212 and that the appropriate forum is the Sindh Service Tribunal. Such contradictory stance cannot be allowed. The petitioners, being contractual employees, have approached this Court to enforce their rights arising under a statutory enactment, i.e., the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013. Their claim involves enforcement of fundamental rights, particularly the right to equality and fair treatment guaranteed under Articles 4, 9 and 25 of the Constitution; thus, constitutional jurisdiction is rightly invoked.

17. The pivotal question for determination is whether the petitioners fall within the ambit of the Act of 2013, which came into force on 25.03.2013. The Section 3 of the Act reads as under:-

“Notwithstanding anything contained in the Act or rules made thereunder or any decree, order or judgment of a Court, but subject to other provisions of this Act, an employee appointed on adhoc and contract basis or otherwise (excluding the employee appointed

on daily-wages and work-charged basis), 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 and its project in connection with the affairs of the Province, immediately before the commencement of this Act, shall be deemed to have been validly appointed on regular basis.”

The petitioners were undeniably serving on sanctioned posts in the Education and Literacy Department immediately before the commencement of the Act. Their appointment orders, physical fitness certificates and advertisement copies on record demonstrate that their appointments were made after fulfilling all codal formalities and through the competent authority, thereby meeting the mandatory requirements of Section 3 of the Act of 2013.

18. The contention of the learned A.A.G. Sindh that the Act of 2013 does not extend to employees appointed under a development project for a specific tenure is entirely misconceived and inconsistent with the clear mandate of Section 3 of the Act. The said provision expressly applies to any employee (i) appointed on adhoc or contract basis, (ii) against a post in BS-1 to BS-18 or its equivalent, and (iii) “who is otherwise eligible for appointment on such post and is in service in the Government department and its **project** in connection with the affairs of the Province immediately before the commencement of this Act.” These three ingredients, when read conjunctively, leave no room for excluding project-based employees from its ambit. The legislature has explicitly included employees

serving in a project in connection with provincial affairs, while consciously excluding only daily-wage and work-charged employees. The petitioners were serving against sanctioned posts in the Education and Literacy Department, which is directly connected with the affairs of the Province; hence, they fulfill all the statutory requirements. Any interpretation excluding project-based contractual employees would defeat the legislative intent and amount to reading into the statute a limitation which the legislature has deliberately omitted, which is impermissible in law.

19. In pursuance of Section 3, the Government of Sindh issued a Notification dated 16.09.2014, constituting Scrutiny Committees at provincial and district levels to scrutinize cases of contractual and adhoc employees. The petitioners' counsel even sought permission before this Court to appear before the Scrutiny Committee (order dated 21.09.2017), but despite repeated directions, the learned A.A.G. continued to seek time and ultimately stated on 28.03.2018 that he was instructed to argue the matter on merits instead of referring the cases to the Committee. This inaction amounts to a clear violation of statutory duty and reflects *mala fide*. Further, this Court's order dated 16.01.2020 specifically directed the learned A.A.G. to produce the advertisement to confirm whether codal formalities had been fulfilled at the time of appointments. The respondents failed to produce any such record, while the petitioners placed the advertisement on record, which remains unrebutted. This substantiates that the petitioners were validly appointed in accordance with law. However, the conduct of the respondents, who

have denied the relief to the petitioners, which is given under Section 3 of the Act of 2013, amounts to discriminatory treatment and is violative of the constitutional guarantees of fair and equal treatment. The petitioners, who possess unblemished service records and have served continuously, are entitled to the same protection under law as extended to other contractual employees.

20. Whatever, we have discussed above in respect of the regularization of the petitioners, we are also encouraged with the decisions of the Honourable Supreme Court in the case reported as **PROVINCE OF PUNJAB through Secretary Communication and Works Department and others v. AHMAD HUSSAIN (2013 SCMR 1547)**, wherein the services of a work-charged employee, engaged for more than fourteen years, were directed to be regularized on the principle that long and continuous service against posts of permanent nature gives rise to a presumption of regular need, obliging the authority to consider regularization. The Apex Court held that even work-charged, casual, or daily-wage workers, by virtue of long continuation in service, cannot be treated as temporary in perpetuity when their posts are of a permanent nature and their services are consistently utilized by the department. Applying the same principle to the present case, the petitioners have been serving continuously against sanctioned posts in the Education and Literacy Department well beyond their contractual period, performing functions of permanent nature essential for running public schools. Moreover, unlike in *Ahmad Hussain's* case (supra), where regularization was sought in the absence of a specific statutory

provision, here, the petitioners' claim stands on a stronger footing as they are protected by Section 3 of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, which expressly deems contract employees "in service in the Government department and its project in connection with the affairs of the Province" to have been validly appointed on regular basis. Therefore, denial of regularization to the petitioners, despite statutory protection and continuous service, would amount to discriminatory treatment and is inconsistent with the ratio laid down in *Ahmad Hussain's* case (supra).

In another case reported as *GOVERNMENT OF NWFP through Secretary, Education Department v. ATIF HUSSAIN (2005 SCMR 100)*, the Honourable Supreme Court held that long and continuous service of contractual or temporary employees creates a legitimate expectation of regularization, particularly when such employees are appointed against sanctioned posts and their services are continuously availed by the department without interruption. The Apex Court observed that the State cannot adopt a policy of pick and choose, regularizing some similarly placed employees while denying the same relief to others, as such discriminatory treatment offends the constitutional guarantee of equality under Article 25. In the present case, the petitioners not only fulfill the same criteria laid down in *Atif Hussain's* case (supra) but also stand on a much stronger footing as their regularization is explicitly governed by a statutory enactment, i.e., Section 3 of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, which deems contract employees "in service in

the Government department and its project in connection with the affairs of the Province” to have been validly appointed on regular basis. Denial of regularization to the petitioners, despite their continuous service against sanctioned posts and unblemished record, would thus be violative of both statutory and constitutional protections.

21. Almost similar circumstances of the instant case based on the Act of 2013, are also involved in the case of **ABDULLAH JUMANI and others v. PROVINCE OF SINDH** and others (2024 SCMR 1258), whereby the petitioners, who were contractual Deputy District Attorneys, approached this Court seeking directions for (i) regularization of their services under Section 3 of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, (ii) issuance of necessary notifications for regularization and payment of withheld salaries and (iii) restraining the respondents from terminating their services. They also challenged, *inter alia*, the Scrutiny Committees’ adverse reports, contending that the refusal to regularize their services was discriminatory, arbitrary, and violative of Articles 4, 9, 10-A, and 25 of the Constitution. This Court, instead of adjudicating the petitioners’ claims, dismissed the petitions and, in an act of judicial overreach, suo motu declared the Act of 2013 ultra vires, holding that the petitioners were governed by a ‘master and servant’ relationship and had no vested right to regularization. The Honourable Supreme Court, however, allowed the appeals, set aside the impugned judgment and remanded the case to this Court for fresh decision after providing an opportunity of hearing to all

affected parties. The Apex Court held that (i) this Court has no suo motu jurisdiction under Article 199 of the Constitution, (ii) the vires of the Act of 2013 were never challenged by any party and could not have been examined in collateral proceedings, (iii) the Act of 2013 is a beneficial piece of legislation enacted to secure the rights of contractual and adhoc employees, and (iv) long continuation of service under sanctioned posts, coupled with the statutory protection of Section 3, creates a legitimate expectation of regularization. The Honourable Supreme Court further observed that striking down the Act in rem, without hearing thousands of affected employees who were already regularized under the Act, was a grave violation of Articles 10-A and 25 of the Constitution.

The ratio decidendi of **Abdullah Jumani's** case (supra) directly supports the present petitioners' case. In both matters, the petitioners were appointed against sanctioned posts, continued in service well beyond their contractual tenure and sought regularization under Section 3 of the same Act. However, the petitioners' case stands on an even stronger footing because, unlike in case of *Abdullah Jumani* (supra), where the matter was remanded for reconsideration, here the petitioners have produced unimpeachable evidence of continuous service (salary slips, attendance registers and certificates) and fulfillment of codal formalities, which has not been specifically denied by the respondents. Therefore, in light of the Apex Court's affirmation of the Act of 2013 validity and its beneficial object, the petitioners are

squarely entitled to regularization and consequential benefits under Section 3 of the Act of 2013.

22. In light of the above discussion, we are satisfied that the petitioners fully meet the criteria under Section 3 of the Act of 2013. Their continuous service, valid appointments and eligibility for the posts as well as verdicts of the Apex Court, entitle them to be treated as regular employees from the date of commencement of the Act. The respondents' failure to process their cases for regularization is arbitrary, discriminatory and unsustainable in law.

23. For what has been discussed above, these petitions are **allowed** in the following terms:-

- A.** The respondents are directed to place the petitioners' cases before the competent Scrutiny Committee constituted under Notification dated 16.09.2014 within thirty (30) days of receipt of this judgment for scrutiny strictly in accordance with Section 3 of the Act of 2013.
- B.** Upon completion of scrutiny, the respondents shall ensure that the petitioners are regularized from the date of commencement of the Act, provided their service record and eligibility are duly verified as per the requirements of law.
- C.** The respondents are further directed to release the withheld salaries of the petitioners forthwith, subject to verification of attendance, as their continuous performance beyond the contractual period stands established.
- D.** The petitioners shall not be subjected to any adverse action, including termination or transfer, until completion of the regularization process.

E. The entire exercise shall be completed within sixty (60) days, and a compliance report shall be submitted before the Additional Registrar of this Court within fifteen (15) days thereafter.

24. The petitions stand **allowed** in the above terms. *Office to place a signed copy of this judgment in captioned connected matters.*

JUDGE

JUDGE