

IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No.D-1768 of 2023

[Mujahid Ali and 03 others versus Federation of Pakistan & another]

Before:

Justice Mohammad Karim Khan Agha

Justice Adnan-ul-Karim Memon

Date of hearing & Order: 03.10.2025

Mr. Muhammad Ramzan, advocate for the petitioners.

Mr. Asghar Ali Khan, advocate for the respondent No.2 / PSM.

Ms. Wajiha Mehdi, Assistant Attorney General.

ORDER

Adnan-ul-Karim Memon, J. Through this petition, the petitioners seek the following relief(s):-

- i. *To declare that the petitioners are entitled to the pay scale / Pay Grade and designation of Deputy Manager equal to Assistant Professor and instead of Assistant Manager equal to Lecturer, and Petitioner no 4 is also entitled to Assistant Manager instead of Junior Officer.*
- ii. *To Direct the Respondents to pay all the back benefits with arrears as per the pay scale and designation of Deputy Manager equal to Assistant Professor since their appointment as regular, i.e., 15-12-2016, and petitioner No. 4 as per the pay scale of Assistant Manager instead of Junior Officer.*

2. The Petitioners were initially appointed as Lecturers (or Warden) at Pakistan Steel Cadet College between October 2001 and May 2005 and were later promoted to Assistant Professor. They performed their duties on a contract basis until they filed Constitutional Petition No. 5176/2013 for the regularization of their services. This Court allowed/disposed of the petition on December 15, 2016, directing the respondent to regularize their services in line with the Cabinet Sub-Committee's decision of March 13, 2013. This order was upheld by the Supreme Court of Pakistan on March 21, 2017, when the Respondent's challenge was dismissed. In compliance, the Petitioners' services were regularized on June 23, 2017. However, they were regularized as Assistant Manager instead of the equivalent designation of Deputy Manager (which they claim is equal to their previous post of Assistant Professor). The Petitioners alleged that this was done "Malafidly" and resulted in them being placed one step down in designation and pay scale/grade, which is against the spirit of the court orders.

3. The learned counsel argues that, according to Pakistan Steel Mills policy and a 1990 letter, the designation of Assistant Professor is equal to Deputy Manager.

The Petitioners contend they were illegally deprived of both the Deputy Manager designation and the higher salary they were drawing during their contract period, a reduction contrary to Pakistan Steel Mills' service rules (Chapter VII, Clause 7.2) which protect the last drawn pay. Despite moving applications to have their pay and designation fixed as Deputy Manager/Assistant Professor in view of the orders from the High Court and Supreme Court, the Respondents failed to respond or resolve the issue. The counsel prays that the petition be allowed, asserting the Petitioners are entitled to regularization at the Deputy Manager level with the corresponding pay scale/grade, effective from the High Court's order date of December 15, 2016. He submitted that the petitioners were Regularized as Assistant Manager, losing the Deputy Manager designation. However, their Pay was reduced upon regularization, violating the service rule to protect "last pay drawn." He seeks Appointment as Deputy Manager with the corresponding higher salary/pay scale, effective since December 15, 2016. He prayed to allow this petition.

4. Learned counsel for respondent 2 opposed the petition, arguing that by accepting the regularization letter and joining the post of Assistant Manager regularly, the Petitioners are deemed to have waived their right to challenge the terms of that regularization (i.e., the designation and pay scale). They are "estopped" from challenging a benefit they willingly accepted. The counsel argues the petitioners had a choice: accept the terms and gain regular status (with all its security and benefits like pension/gratuity), or reject the terms and pursue a legal challenge while remaining on contract. They chose to accept the regular post, thus agreeing to its terms. This petition is not entertainable after their acceptance of the regularization, which was/is fresh terms of service. He prayed for dismissal of the petition. Learned AAG is of the same view.

5. We have heard learned counsel for the parties and considered the record.

6. The Petitioners, initially appointed as Lecturer/Warden (2001-2005) and later promoted to Assistant Professor (2008-2010), sought service regularization. This Court ordered regularization (Dec 15, 2016), a decision the Supreme Court upheld (Mar 21, 2017). However, when their services were regularized (Jun 23, 2017), they were appointed as Assistant Manager instead of the requested, and allegedly equivalent, Deputy Manager. In such circumstances, the Supreme Court has often held that regularization is not a continuation of the contract service but a fresh appointment into the regular cadre. Since it is a fresh appointment, the new pay and designation are governed by the rules of the regular post (Assistant Manager in this case), not the previous contractual terms (Assistant Professor/Deputy Manager). It is well-settled law that regularization of service has a prospective effect (from the date of regularization), not a retrospective one

(from the date of initial contract appointment), though this mainly applies to the effective date. However, the Petitioners specifically cite the Pakistan Steel Mills service rule (Chapter VII, Clause 7.2) which states: "Pay of the departmental candidate shall be fixed by protecting the last pay drawn." If this specific service rule applies to them, accepting the regularized post does not waive their right to pay protection.

7. The Petitioners' case is that their acceptance of regularization as Assistant Manager does not bar their claim because the regularization was mandated by this Court and Supreme Court orders to be compliant with the Cabinet Sub-Committee decision. The implementation is challenged as unlawful and malafide because it violates the "protection of pay" clause in the Steel Mill's own service rules by reducing their salary and deviates from the established policy (1990 letter) that Assistant Professor \equiv Deputy Manager, by regularizing them one step lower as Assistant Manager. However, the counsel for the respondents heavily relied upon the waiver through acceptance of the regularization process.

8. In view of the facts and circumstances of the case the competent authority of respondents is directed to consider the fixation of the petitioners' pay scale/grade at the level corresponding to the post of Deputy Manager, with the pay protected at the "last pay drawn" by them during their contract as Assistant Professors, as required by Chapter VII, Clause 7.2 of the Pakistan Steel Mills Officers Service Rules and Regulations and calculate and pay all the differential salary arrears owed to the petitioners, along with any associated benefits, from the date of this Court's original regularization order. The aforementioned exercise shall be undertaken within three months after hearing the petitioners.

9. This petition stands disposed of in the aforesaid terms.

JUDGE

HEAD OF CONST. BENCHES