

HIGH COURT OF SINDH, CIRCUIT MIRPURKHAS

C.P No.D-765 of 2024

[Dr.Mehboob Ali and 03 others vs. Government of Sindh and others]

Present:

Justice Arbab Ali Hakro, J

Justice Riazat Ali Sahar, J

Petitioners by : Mr.Sajjad Ahmed Chandio, Advocate

Respondents by : Mr.Muhammad Sharif Solangi, Asst. A.G Sindh

Date of hearing : **19.3.2025 and 30.4.2025**

Date of decision : **07.5.2025**

J U D G M E N T

ARBAB ALI HAKRO, J: Through this Constitutional Petition, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("the **Constitution**"), the Petitioners seek directions to the Respondents to complete the process of regularizing their services and to declare that they are entitled to the same treatment and relief as has been extended to their colleagues and other doctors.

2. The salient facts, as delineated in the memo of petition, establish that the Petitioners were inducted into service on a contractual basis against the posts of District Nutrition Officer (BPS-17/18) under the aegis of the Nutrition Support Program for Sindh. Their initial engagement was confined to a tenure of one year, which was thereafter subjected to successive extensions, culminating in a cumulative service span of approximately four years. It is further averred that the Government of Sindh, in pursuance of its legislative mandate, has effectuated the regularization of thousands of medical practitioners across diverse projects, programs, healthcare facilities, and institutes of health through the promulgation of Sindh Act No. XLII of 2018, formally titled "The Regularization of Doctors Appointed on Contract or Adhoc Basis Act, 2018" (hereinafter referred to as "**the Doctors Regularization Act, 2018**"). However, despite standing on an identical footing in terms of contractual engagement, the Petitioners continue languishing in precarious uncertainty, deprived of the benefit of regularization extended to similarly placed persons. It is the categorical stance of the Petitioners that they possess an unequivocal entitlement to parity of treatment, akin to the doctors who have been regularized under the Doctors Regularization Act, 2018. Notwithstanding their repeated summoning by the Respondents and

the submission of requisite documentation, they remain disenfranchised, ostensibly owing to extraneous political considerations and malpractices, thereby perpetuating their status as victims of an arbitrary and capricious exercise of discretion. Moreover, it is emphatically asserted that the colleagues of the Petitioners, who were appointed under the same program and governed by identical terms and conditions, have already been bestowed with the benefit of regularization by the Respondents. The non-regularization of the Petitioners, despite the existence of a similarly situated cadre of employees who have been absorbed into permanent service, not only constitutes a manifest violation of the principles of equality but also smacks of mala fide intent.

3. On 19.3.2025, this matter was heard and reserved for the Order to be pronounced during the course of the day. However, while dictating the Order, certain significant legal points came to light, necessitating further deliberation. Consequently, on the same date, 19.3.2025, the following Order was passed:

*“We have heard the instant petition and during the process of dictating the Order during course of day, certain significant legal points have come to light. Specifically, in the case of **Anjum Badar vs. Province of Sindh (PLD 2021 Sindh 328)**, Section 3 of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 was interpreted, emphasizing the unconstitutionality of regularizing employees in higher grades without selection by the relevant Commission. The corresponding Section 3 of the Act under consideration, namely the Regularization of Doctors Appointed on Contract or Ad-hoc Basis Act, 2018, is *pari materia* to the aforementioned Act of 2013. The above crucial legal point has not been addressed by the learned counsel for the parties. Accordingly, let the matter be adjourned to **30.4.2025**, and this matter may not be treated as part heard.”*

4. At the very outset, the learned counsel for the Petitioners submits that the instant petition is maintainable within the constitutional framework, as the Petitioners have been subjected to arbitrary and discriminatory treatment, amounting to a blatant violation of Article 25 of the Constitution, thereby warranting the invocation of this Court’s writ jurisdiction under Article 199. It is contended that the Respondents, despite effectuating the regularization of thousands of doctors under the auspices of the Doctors Regularization Act, 2018, have unjustifiably and capriciously refused to extend the same relief to the Petitioners, despite their standing on an identical footing, thus infringing their vested legal rights. Learned counsel

places reliance upon the judgment rendered in **Abdullah Jumani's**¹ case, wherein the Supreme Court of Pakistan set aside the findings recorded in **Anjum Badar's**² case. He contends that the gravamen of the controversy pertains to the interpretation of Section 3 of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013³ (hereinafter referred to as "**Sindh Regularization Act, 2013**") , wherein it had been previously held that regularization of employees in higher grades, absent selection through the relevant Commission, was unconstitutional. However, in **Abdullah Jumani's** case, the Supreme Court meticulously re-evaluated this reasoning and conclusively held that the learned High Court had manifestly transgressed its jurisdiction by assuming *suo motu* authority beyond the ambit of Article 199 of the Constitution, thereby invalidating its findings regarding the alleged unconstitutionality of the regularization process. Learned counsel further submits that Section 3 of the Doctors Regularization Act, 2018⁴, being *pari materia* to Section 3 of the Sindh Regularization Act, 2013, must necessarily be interpreted in conformity with the binding precedent of **Abdullah Jumani's** case rather than adhering to the erstwhile and overturned findings recorded in **Anjum Badar's** case. In conclusion, the learned counsel prays that this Court may be pleased to direct Respondents No. 1 and 2 to extend the same treatment and relief to the Petitioners as has been granted to their similarly placed colleagues/doctors, thereby ensuring parity of treatment and safeguarding their legitimate rights. To substantiate his contentions, learned counsel relies on case law reported as **2025 SCMR 14 and PLD 2021 Sindh 328**.

5. Conversely, the learned Assistant Advocate General, while advancing arguments, has acknowledged the foregoing position by

¹ Abdullah Jumani and others v. Province of Sindh and others (2024 SCMR 1258)

² Anjum Badar v. Province of Sindh through Chief Secretary and 2 others (PLD 2021 Sindh 328)

³ 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 an 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 it's projected in connection with the affairs of the Province, immediately before the commencement of this Act, shall be deemed to have been validly appointed on a regular basis.

⁴ 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, all categories of Doctors appointed on a contract or adhoc basis in the Health Department or its Regular Projects, Programs and Health Facilities, and holding such appointment on the commencement of this Act, shall be deemed to have been validly appointed to that post as a civil servant on a regular basis, with effect from the date of commencement of this Act: Provided that the orders of the regularization of services of a doctor shall be issued by the appointing authority subject to verification of their required qualifications by Health Department, Government of Sindh.

submitting that under the Doctors Regularization Act, 2018, the services of doctors appointed on a contract or ad hoc basis, who had duly fulfilled all requisite codal formalities, were regularized pursuant to due scrutiny and approval by the competent authority. He further contends that, at the relevant juncture, the Petitioners failed to appear before the Scrutiny Committee, thereby forfeiting the opportunity to have their cases considered. It is additionally submitted that a subsequent meeting of the Scrutiny Committee was convened with the specific mandate to examine the cases of leftover doctors, including the Petitioners, in order to assess their eligibility for regularization under the Doctors Regularization Act, 2018 and to recommend appropriate action in accordance with the established legal framework. Learned A.A.G. further argues that, in the interregnum, this Court, at its principal seat, passed an Order dated 08.04.2021 in **Anjum Badar's** case (C.P No.D-6241/2016 and connected petitions), unequivocally holding that the regularization of contractual employees in BS-16 and above, pursuant to Section 3 of the Sindh Regularization Act, 2013, was liable to immediate reversal. Aggrieved by the aforementioned Order, the appellants Abdullah Jumani and others preferred Civil Appeals No. 25-K to 38-K of 2021 before the Supreme Court of Pakistan. The appeals were conclusively adjudicated through judgment dated 29.12.2023 (**Abdullah Jumani's case**), wherein the Supreme Court of Pakistan set aside the Order dated 08.04.2021 and remanded the matter to this Court for fresh adjudication, expressly mandating an opportunity of hearing to all concerned parties. Learned A.A.G. asserts that consequent to these judicial developments, the regularization process stands suspended, pending the final determination of this Court, as the issues and legislative provisions underpinning the present petition are identical to those under consideration in the remanded proceedings.

6. We have meticulously examined the submissions of the learned counsel for the Petitioner and the Assistant Advocate General and have scrupulously reviewed the record with their assistance.

7. The instant petition concerns the regularization of Petitioners being doctors appointed on a contract/ad hoc basis under the Doctors Regularization Act, 2018, with reference to Section 3 of the Sindh Regularization Act, 2013. The petitioners claim entitlement to regularization, asserting that they stand on equal footing with other doctors who have already been regularized under the 2018 Act. Conversely, the learned Assistant Advocate General opposes this stance, arguing that regularization must be subject to merit-based recruitment principles.

8. The core legal issue revolves around the interpretation of Section 3 of the Sindh Regularization Act, 2013 and Doctors Regularization Act, 2018, the judgment in **Abdullah Jumani's** case, the scope of the Sindh Public Service Commission (Functions) Rules, 2022 ("**Sindh PSC Functions Rules, 2022**"), and the terms of appointment orders issued to the petitioners. Constitutional considerations under Article 25 (Equality of Citizens) and Article 240 (Appointments in the Service of Pakistan) must be evaluated.

9. Section 3 of the Sindh Regularization Act, 2013, provides that employees in BS-1 to BS-18, appointed on an adhoc or contract basis, shall be deemed to be validly appointed on a regular basis, provided they were in service immediately before the commencement of the Act and were otherwise eligible for appointment. The deeming clause in this provision overrides conflicting laws, rules, or judgments, ensuring automatic regularization of such employees without requiring further selection mechanisms, subject to their eligibility criteria. However, daily wage and work-charged employees are expressly excluded, reflecting legislative intent to extend permanent benefits only to those serving in government departments and projects.

10. Section 3 of the Doctors Regularization Act, 2018 similarly provides that all categories of doctors appointed on a contract or ad hoc basis in the Health Department, its projects, programs, and health facilities shall be deemed to have been validly appointed on a regular basis, effective from the date of commencement of the Act. However, this Act introduces an additional condition requiring verification of qualifications by the Health Department before regularization orders are issued. This provision ensures that only qualified professionals benefit, thereby maintaining standards and meritocracy within the medical sector. The statutory framework of this Act is *pari materia* to the Sindh Regularization Act, 2013, reinforcing that regularization must be implemented as per legislative intent.

11. The judgment in **Abdullah Jumani's** case holds significant legal weight in the instant matter. The Supreme Court set aside the findings of **Anjum Badar's** case, which had previously declared regularization without selection through the Commission unconstitutional. In Paragraphs 15 and 16, the Supreme Court reasoned that: the High Court had exceeded its jurisdiction by assuming suo motu authority beyond Article 199 of the Constitution; the Advocate General had no independent mandate to challenge the law, as his role is merely advisory; if defects existed in the law, the government had the exclusive authority to amend or

repeal it, rather than having the courts declare it ultra vires and thousands of employees were adversely affected, violating Article 10-A of the Constitution, which ensures the right to a fair hearing. The Supreme Court's ruling effectively nullifies the restrictive findings of Anjum Badar's case, reaffirming that Section 3 of the Doctors Regularization Act, 2018, remains valid law.

12. Rule 3 of the Sindh PSC Functions Rules, 2022, mandates SPSC to conduct initial recruitment tests for BS-16 to BS-22 posts in government service. However, Rule 4 provides explicit exceptions, stating that the Commission shall not conduct tests for contract-based appointments or for temporary posts lasting six months or less. This distinction reinforces the legislature's intent that regular appointments must undergo competitive selection while contractual engagements remain exempt from SPSC oversight. Consequently, Section 3 of the Doctors Regularization Act 2018 does not violate Rule 3 pertaining to regularization, not initial recruitment.

13. Condition No. 12 in the Petitioners' appointment orders grants discretion to the competent authority to modify terms of employment, ensuring alignment with civil service benefits. This clause confirms that the Petitioners' status is not rigidly fixed as contractual, thereby supporting their eligibility for regularization.

14. Under Article 25 of the Constitution, all citizens are entitled to equal treatment. Despite their colleagues having been granted this benefit, the arbitrary refusal to regularise the Petitioners constitutes discrimination, violating fundamental rights. In the case of **Ejaz Akbar Kasi and others**⁵, the Supreme Court of Pakistan held as follows:

"4. Be that as it may, we are not inclined to agree to the reasons which prevailed upon the Board in not regularizing the Group 4, 5 and 6 when at the same time the employees of other Groups as noted hereinabove were regularized beside other individual persons whose names have also been mentioned hereinbefore. This Court has laid down a criteria in respect of such employees who have somehow identical contentions in the case of Ikram Bari and others v. National Bank of Pakistan through President and another (2005 SCMR 100). Therefore, we are of the opinion that the case of the petitioners deserves to be considered by the Board of Directors for the reasons noted hereinabove as they cannot be discriminated without any cogent reason by violating the provisions of Article 25 of the Constitution and at the same time after having spent a considerable period of their lives in

⁵ Ejaz Akbar Kasi and others vs. Ministry of Information and Broadcasting and others (PLD 2011 Supreme Court 22)

the Organization performing duties on contract basis. It is also the duty of the Organization to protect their fundamental rights enshrined in Article 9 of the Constitution.”

15. Similarly, Article 240 affirms that all appointments in provincial service must be made in accordance with law. Since the Doctors Regularization Act 2018 was duly passed by the Provincial Assembly of Sindh, it retains full legislative force, requiring implementation without undue administrative hurdles. In the case of **Mst. Nadia and 2 others**⁶, the Supreme Court of Pakistan held as follows:

“6. When an employee seeks regularization of service of the Province or Federation, he in-fact seeks his appointment thereto. Article 240 of the Constitution requires a law which should provide for such appointment to civil service of the Federation or civil service of the Province. The general law providing for such appointment has been the Civil Servants Act, 1973 in case of service of Federal Government and Civil Servants Act, 1974 in case of service of the Province and the rules framed under the two respective laws. When a person is not appointed under said laws or rules framed thereunder then another special law in the form of regularization of services Act would be required to provide for induction of the employees in the service of the Province. Both the legislatures i.e. the Federal as well as the provincial have been retaining such powers to provide for appointment and regulating the terms and conditions of new entrants in the service of Federation or Province, according to Article 240 of the Constitution. This is the reason that whenever the provincial government has intended to regularize employees not appointed under the respective Civil Servants Acts and rules framed thereunder, then special acts of regularization have been promulgated for the purpose. It was for this purpose that the provincial government of Khyber Pakhtunkhwa has promulgated, Khyber Pakhtunkhwa Ad hoc Civil Servants (Regularization of Services) Act, 1987, Khyber Pakhtunkhwa Civil Servants (Regularization of Services) Act, 1988, Khyber Pakhtunkhwa Employees on Contract Basis (Regularization of Services) Act, 1989, Employees on contract Basis (Regularization of Services) (Amendment) Act, 1990, Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005, Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009, Khyber Pakhtunkhwa Extra-Assistant Commissioners cum-Illaq Qazi (Regularization of Services) Act, 2012 and Khyber Pakhtunkhwa Regulation of

⁶ Mst. Nadia and 2 others vs. Government of Khyber Pakhtunkhwa through Secretary Health, Khyber Pakhtunkhwa, Peshawar and 3 others (2022 PLC (C.S) 1275)

Lady Health Workers Program and Employees (Regularization and Standardization) Act, 2014.”

16. Based on the interpretation of Section 3 of the Sindh Regularization Act, 2013 and Doctors Regularization Act, 2018, the judgment in Abdullah Jumani’s case, the rules governing SPSC examinations, the terms of appointment orders, and constitutional mandates for the regularization of doctors under the Doctors Regularization Act, 2018, is legally valid, as the Supreme Court has set aside the restrictive findings of Anjum Badar’s case. Section 3 of the Doctors Regularization Act, 2018 does not violate recruitment rules pertaining to existing contract-based employees rather than fresh appointments. The Petitioners, being similarly placed as other regularized doctors, are entitled to equal treatment under Article 25 of the Constitution. The appointing authority must verify the qualifications of the Petitioners, as stipulated in the proviso to Section 3 of the Doctors Regularization Act, 2018, before issuing formal regularization orders. The Petitioners’ appointment letters contain provisions allowing modification of their service terms, reinforcing their eligibility for regularization. The legislative competence of the Sindh Assembly under Article 240 remains intact, as the Doctors Regularization Act, 2018, was duly enacted by the Provincial Legislature.

17. Accordingly, the Petitioners are entitled to regularization under the Doctors Regularization Act, 2018, subject to verification of their qualifications by the Health Department, Government of Sindh. The Respondents must act in accordance with the law and implement the regularization process without undue delay. Accordingly, the petition is **allowed**.

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