

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No. D-3869 of 2025
[Jawad Ali Tunio v. Section Officer (ADMN-II) and others]

Date	Order with signature of Judge(s)
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Before:

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Muhammad Hassan Akbar

Date of hearing and Order: 26.03.2026

Mr. Jawad Ali Tunio, petitioner present in person.

Mr. Abdul Jalil Zubedi, AAG, along with

Mr. Anees Ahmed, Additional Secretary (Admin), Government of Sindh.

ORDER

Adnan-ul-Karim Memon, J. – The petitioner, Jawad Ali, has filed this Constitutional Petition under Article 199 of the Constitution, seeking a declaration that he was illegally denied appointment as Sub-Engineer (BS-11) despite scoring higher than selected candidates. He also challenged the recruitment process for conducting interviews internally rather than through a third party and for not observing the Rural/Urban quota, and sought to set aside the appointment press release dated 22.07.2025.

2. The petitioner, appearing in person, submitted that Respondent No.1 had invited applications for the posts of Sub-Engineer (BS-11) in various disciplines through a consolidated advertisement published in different newspapers, including the Sindhi daily Kawish, wherein the last date for submission of applications was 11.11.2024. He submitted that he applied for the said post and appeared in the written test, in which he secured 55 marks. Thereafter, he appeared in the interview held on 06.05.2025 and was awarded 21 marks; however, he was later on declared unsuccessful to meet the threshold of the Marks, whereas other candidates who secured less Marks than him were appointed. The petitioner further submitted that the respondents failed to follow the mandatory requirement of observing the Rural and Urban quota during the recruitment process. He also submitted that in the case of contractual appointments, there is no concept of allocation of marks; the criteria adopted by the respondents were not applicable rather to deprive the deserving candidates. He also prayed for setting aside the press release dated 22.07.2025 issued by Respondent No.1.

3. The learned AAG assisted by Additional Secretary (Admin), Government of Sindh submitted that the petitioner had raised certain objections regarding the recruitment process, that the interviews were conducted by the department instead of a third party, that the rural and urban quota was not observed, that there is no concept of allocation of marks in contractual appointments, and that the notification dated 26.04.2023 relating to allocation of marks does not apply to contractual

appointments. In response, he submitted that no violation of any law or policy had been committed by the respondent department. He added that the appointments in question were purely contract-based and were made strictly in accordance with the terms and conditions of the contract, duly approved by the competent authority. It was further submitted that contract employees do not fall within the definition of “civil servants” under Section 2 of the Civil Servants Act, 1973, and therefore the rules applicable to civil servants do not apply to contractual employees. The Additional Secretary also submitted that even in cases of regular civil servants, certain categories, such as short-term vacancies and project posts, are exempt from the application of reserved quotas for minorities and women under the Government of Sindh SGA&CD notifications dated 28.05.2010 and 08.03.2017. It was emphasized that there is no established legal requirement or practice of applying reserved quotas, including rural and urban quotas, to contract-based employment. He submitted that Contractual appointments are governed by the terms of the contract and the applicable policy, and are made to meet specific administrative and temporary needs. It was also submitted that the rural and urban quota is a statutory requirement applicable to initial recruitment against regular and permanent posts under the recruitment rules framed pursuant to Article 27 of the Constitution, and the same does not automatically apply to contractual appointments unless expressly provided in the relevant policy or rules. Learned AAG also relied upon judgments of the Supreme Court of Pakistan reported as **2015 SCMR 456**, wherein it has been held that recruitment rules and procedural safeguards applicable to regular appointments apply only to permanent appointments, and that temporary, ad-hoc, or contractual employees stand on a different legal footing and do not acquire the status or rights of civil servants. It has also been held that contractual employees remain governed by the terms of their contract, and service rules applicable to regular employees cannot be extended to them by implication. He submitted that the Supreme Court has further held that contract and project-based appointments are time-bound arrangements and do not attract the procedural requirements meant for regular civil servants unless expressly provided by law. It was further submitted that this Court has also held that the rural and urban quota is mandatory only for regular recruitment against permanent posts and does not apply to contractual or temporary appointments unless specifically provided under the relevant rules or policy. He emphasized that in the present case, it was reiterated that the appointments were purely contractual, time-bound, and non-regular in nature, and the policy governing such appointments does not require observance of rural and urban quota. Regarding the notification dated 26.04.2023 relating to the allocation of marks, it was submitted that although the said notification pertains to regular appointments, the criteria were adopted in the present recruitment process only to ensure transparency, merit, uniformity, and fairness, and not because it was legally mandatory for contractual appointments. The Additional Secretary concluded by saying that due to administrative and fiscal constraints, contract-based appointments are a necessary

mechanism to meet temporary and project-based requirements of the department, and therefore, such appointments cannot be dispensed with, which is protected under the policy decision. It was therefore submitted that the appointments in question were made strictly in accordance with the law and policy, and no violation of any law or rule has been committed by the respondent department. He prayed to dismiss the petition.

4. We have been informed that this reservation of certain quota under the Constitution and law, however, does not apply to project-related posts, appointments by promotion or transfer, short-term vacancies expected to last less than six months, or isolated posts that arise occasionally. It is also urged that these rules extend to all attached departments, autonomous and semi-autonomous bodies, and corporations under the administrative control of the Government of Sindh. Similarly, the Government of Sindh has directed that women's quota in initial appointments be enhanced in accordance with the relevant recruitment rules. It is added that the reservation for women is also subject to exceptions, including appointments by promotion or transfer, short-term vacancies, isolated posts, and positions where the work has already been adequately staffed. It is also emphasized that Section 27 of the Constitution provides that no citizen shall be discriminated against in appointments based on race, religion, caste, sex, residence, or place of birth. However, temporary reservations of quota may be made for up to forty years to secure adequate representation of underrepresented groups, including members of either sex, for posts requiring specific functions that cannot be adequately performed by the other category. However, provincial governments may also prescribe residence requirements for posts under their authority, limited to a period not exceeding three years. Be that as it may, we are only concerned with regard to bypassing the regular mode of appointment rather than on a contractual basis.

5. In principle, all appointments in the departments of the Government of Sindh are required to be made through the competitive process that is substantially fair, transparent, and in accordance with applicable rules and regulations, including the minority and differently-abled quotas. Such appointments must be made competitively on merit and not otherwise. The Government of Sindh was/is required to ensure that all recruitment to posts from BPS-1 to BPS-15 across departments was/is conducted through a competitive process based on open merit, with proper budgetary sanction, and in accordance with the Sindh Civil Servants Act, 1973, and relevant rules and recruitment regulations. However, exceptions were/are limited to posts that are time-bound or project-specific. This Court has already directed in various decisions that in the future, the Government of Sindh and its departments shall avoid filling permanent posts on a contract or ad hoc basis, except for positions expressly allowed under the Sindh Civil Servants Act 1973 or Rules 18 to 20 of the

Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974. (APT) Rules 1974.

6. In the present case, Respondent No.1 advertised the posts of Sub-Engineer (BS-11) on a contract basis through newspapers, including *Kawish*. Prima facie, there is no recognized concept of contractual appointments under the Sindh Civil Servants Act, 1973, and APT Rules, 1974, except for short-term projects or administrative exigencies, as discussed in the preceding paragraph, and must not be used as a substitute for a regular, rule-bound recruitment process.

7. In the regular mode of service, the procedural safeguards, including reserved quotas for minorities, women, and rural/urban representation, are necessary. Prima facie, the Contract appointments cannot be used to bypass these statutory or policy-based reservations of quota. Even in project-based appointments, the principle of merit is fundamental. Primarily, the candidates must be selected based on objective criteria, and appointments cannot be influenced by favoritism, nepotism, or subjective preferences. Prima facie, by advertising these posts on a contract basis, rather than a regular basis, the respondent department disregarded the principles laid down by this Court in the *SESSI* case, which prohibits using contract appointments to bypass recruitment rules, merit, quotas, and procedural safeguards, thereby undermining fairness and transparency in public employment.

8. The Additional Secretary emphasized that contract appointees do not qualify as “civil servants” under the Civil Servants Act, 1973, and thus are outside the ambit of recruitment rules. There is no cavil to this proposition; however, the Constitution and statutory safeguards do not lose their force simply because the employer chooses to call an appointment simpliciter “contractual.” What matters is the nature and substance of the service and the public recruitment process not the nomenclature. The Sindh Civil Servants Act, 1973, and Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974, apply not only to permanent civil servants but also to recruitment processes involving public funds, public offices, and public trust. Appointing authorities cannot evade constitutional rights or statutory safeguards by terming a post simply “contractual.” A recognized principle of law is that form cannot prevail over substance in matters of public employment. It is well settled that contractualization cannot be used to defeat merit or statutory safeguards. Primarily, **Contract appointments cannot be used as a subterfuge to bypass service rules or to circumvent constitutional guarantees of equality, merit, and transparency.** It is also well settled that treating contract employees differently from regular appointees cannot defeat constitutional safeguards if the recruitment method undermines merit, transparency, or equality. Similarly, **a contractual appointment does not mean an arbitrary appointment;** administrative exigency cannot justify arbitrary practices.

9. The Additional Secretary also submitted that the quota applies only to regular posts and not to contractual ones. Primarily, Article 27 of the Constitution and the Sindh Civil Servants Act 1973, make no distinction between temporary or permanent appointments where public competitive recruitment is involved. Article 27 prohibits discrimination in public appointments based on residence, rural/urban, sex, religion, caste, or place of birth. The respondent department cannot rely on contractual status to evade Article 27 of the Constitution. The Supreme Court also held in Judgment that rural/urban and other quotas are not merely administrative conveniences but constitutional mandates to ensure equitable representation in public employment. However, contract or project-based posts do not enjoy exemption from constitutional safeguards unless a law specifically and expressly says so, which factum has not been brought on record.

10. The Additional Secretary attempted to justify internal interviews on administrative expediency and autonomy. In principle, internal interviews conducted by the very department that is recruiting defeat transparency and create an opportunity for bias, nepotism, and arbitrariness. The Supreme Court also held that interviews for recruitment must be conducted through an independent and impartial body, especially where competitive marks are involved. This prevents subjective bias. Primarily, merit-based recruitment cannot be satisfied by a subjective internal interview process without objective safeguards or neutral oversight. The contractual or otherwise, when marks and interviews determine employment, objectivity is mandated.

11. The Additional Secretary emphasized that the allocation of marks were adopted only for transparency and not as a legal requirement. It is well settled that once marks are awarded and used as the basis for selection, they become binding on the employer. A transparent criteria cannot be invoked selectively to justify non-selection. The Supreme Court also held that where selection is competitive and marks are assigned, the entire scheme becomes enforceable and the appointing authority cannot ignore higher marks unless there is a lawful reason. Merit and equality are core constitutional values; no recruitment can deny them on the basis that it is termed “contractual.” Primarily, **a candidate scoring higher than others in a transparent process cannot be deprived of appointment arbitrarily.** Failure to observe procedural safeguards, merit, and equitable representation is discriminatory under Article 4, 25 & 27 of the Constitution. Article 4 provides enforcement of fundamental rights. Article 25 guarantees equality before the law. Article 27 prohibits discrimination in public appointments.

12. In view of the above, Mr. Muhammad Aqil Awan, Senior Counsel of this Court, is appointed as *Amicus Curiae* to assist the Court on the subject issues. Petitioner, AAG, and the Additional Secretary shall also assist on the next hearing.

Copy of this order be circulated to all concerned. Matter be relisted after two weeks.

JUDGE

Shahzad Soomro

JUDGE