

IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No.D-5431 of 2023

(Zaheer Ahmed Kalwar versus Federation of Pakistan and others)

Before:

Justice Muhammad Karim Khan Agha

Justice Adnan-ul-Karim Memon

Date of hearing & order: 30.9.2025

Mr. Rafiq Ahmed Kalwar, advocate for the petitioner

Ms. Wajiha Mehdi, Assistant Attorney General

Syed Asif Ali advocate for respondent No.3

Mr. Kumail Abbas advocate for respondent No.4

ORDER

Muhammad Karim Khan Agha J. Petitioner has filed this Constitutional

Petition with the following prayer(s):

i) *Direct the Respondents to Regularization the service of the Petitioner as Assistant (BPS-15) in Respondent No. 2 from the date from which similarly situated employees have been regularized pursuant to the Office Memorandum dated 23.12.2022 (Annexure "W") issued by the Respondent No. 1 and Letter Dated 12.01.2023 (Annexure "X") issued by the Respondent No. 4 with all back benefits, pay, perks and privileges;*

ii) *Declare that the Petitioner is entitled to Regularization of his services as Assistant (BPS-15) in Respondent No. 2, having served the Respondent No. 2 since the year 2009 on regular post(s).*

iii) *Declare that non-regularization of the Petitioner as Assistant (BPS-15) by the Respondents is discriminatory and in disregard of Orders passed by the Hon'ble High Court of Sindh in C.P. No. D-1267 of 2010 and Hon'ble Supreme Court in Civil Appeal No. 29-K of 2014, whereby the Petitioner was appointed under the Prime Minister Assistance Package PMAP-2006;*

v) *Pass ad-interim Orders for restraining the Respondents from taking any adverse, vindictive, or coercive action against the Petitioner till final disposal of the instant petition;*

iv) *Grant such other relief as this Hon'ble Court may deem fit and proper in the circumstances of the case.*

2. The petitioner's father, Mr. Abdul Haleem Kalwar, a former Deputy Superintendent in Sales Tax, passed away in service on October 6, 2004. The petitioner sought an appointment as a Deputy Superintendent/Auditor (BS-14) under the deceased employee's son quota (Prime Minister's Assistance Package - PMAP-2006). After years of applications, the Prime Minister's Secretariat directed the department (Respondent No. 2) to consider his request on June 17, 2008. The department initially cited a temporary recruitment freeze on June 27, 2008, but later offered the petitioner a contract job as an Upper Divisional Clerk

(BS-9) on November 20, 2009, which he accepted. The petitioner, believing he was eligible for the higher BS-14 post, was aggrieved when the department advertised vacancies for Auditor/Inspector (BS-14) shortly after his appointment. The department then told him to apply in the normal course, contradicting its earlier implied willingness. This led the petitioner to file a constitutional petition, C.P. No. D 1267 of 2010 before this Court. This Court vide Order dated March 9, 2011, directed the department to consider the petitioner for the post of Auditor (BS-14) on a contract basis under the PMAP-2006 policy, if he met the criteria. Despite repeated court orders, including contempt proceedings vide Order dated February 3, 2012, the department failed to comply, citing the post's upgrade to BS-16. This Court vide Order dated May 30, 2013, directed the respondents to conduct a written test only for English proficiency. Following the successful test, the petitioner was offered and eventually joined as an Assistant (BS-14), as directed by this Court vide order dated September 26, 2013, which also directed his immediate consideration for promotion to Inspector (BS-16). The respondents, being aggrieved by and dissatisfied with the aforesaid decision, preferred an Appeal before the Supreme Court. The Supreme Court also dismissed the department's Petition, upholding this court's direction to consider the petitioner's appointment under PMAP-2006. After another offer for the Assistant (BS-14) post, which he challenged through contempt proceedings, this Court dismissed the contempt application vide Order dated September 12, 2017, ruling that the offer of Assistant (BS-14) constituted sufficient compliance. The petitioner then joined as Assistant (BS-14), now the subject post has been upgraded to BS-15, and he was allowed to serve on a contract basis, which has been extended over time. The petitioner's contract was extended for five years instead of being regularized. In December 2022, the Establishment Division issued an Office Memorandum (O.M.) dated December 23, 2022, for the regularization of contract employees appointed under PMAP-2006 and PMAP-2015. The petitioner's case for regularization was forwarded by his current office, and all four other similarly placed officials mentioned in the same request have been regularized. The petitioner's regularization is still pending, with the department citing the unavailability of a sanctioned Assistant (BS-15) post. The petitioner submitted that the refusal to regularize his services, while regularizing others appointed under the same policy, is discriminatory and a violation of his legal entitlement, prompting the filing of this current petition before this Court.

3. The learned counsel's core argument is that the Respondents' failure to regularize the Petitioner's services is discriminatory and unlawful. He argued that the Respondents are violating Article 25 of the Constitution by denying the Petitioner equal treatment and the legal benefit of the Office Memorandum dated 23.12.2022 for regularization. He submitted that the O.M. dated 23.12.2022 was

extended to all other employees appointed under the Prime Minister's Assistance Package (PMAP-2006/2015), including the four other employees mentioned in the same official letter as the Petitioner. he argued that the refusal to regularize the Petitioner, alone, is an unlawful deprivation of a right without justification. He emphasized that the Petitioner has been in continuous service since 2009 for a post that is "inherently permanent in nature." The O.M. dated 23.12.2022 created a legitimate expectation of regularization, which the Respondents have undermined by repeatedly renewing his contract instead of regularizing him. He added that the Respondents failed to properly consider the Petitioner's eligibility, academic qualifications, and professional skills when denying regularization, which runs contrary to established policy and legal standards. In support of his contention, he relied upon the unreported Judgment dated 17.03.2025 passed by the Supreme Court of Pakistan in Civil Petitions No.566-P/2024, and the Judgment dated 16.04.2025 passed by the Supreme Court of Pakistan in C.P.L.A No.808 of 2023. At this stage, learned counsel for the petitioner moved an application to amend the current petition under Order VI Rule 17, read with Section 151 of the Code of Civil Procedure (CPC), to allow the addition of new facts and a new prayer to his original petition. The core reason for the amendment is a new, adverse development: Respondent No. 3 issued an order on July 25, 2024 (Order No. Admn-I/CCIR/RTO-III/2017-18/607) that cancelled the Petitioner's appointment as Assistant (BPS-15). Learned counsel has brought some new Facts to be added (Paragraph 18(A) & 18(B)). He argued that the cancellation order was issued by Respondent No. 3 in a "hurried fashion" on July 25, 2024, after the Court had issued notice on the Petitioner's original plea. The Petitioner's counsel alleges the order was issued "malafidely and vindictively" and was in defiance of previous orders from the Supreme Court and this Court in *C.P. No. D-1267 of 2010*. He added that the cancellation was done without affording the Petitioner an opportunity to be heard, violating the principle of natural justice (*audi alteram partem*). The Petitioner's initial appointment was under the Assistance Package for families of Government Employees who die in service (PMAP), and his contract was previously extended for five years until 2025. The Order dated July 25, 2024, is argued to be void ab initio, illegal, and unlawful. He added a new Prayer to be Added (Prayer i(a)) to declare the cancellation order dated July 25, 2024, as void ab initio, illegal, and in violation of prior court orders and the Petitioner's appointment documents. He lastly prayed to allow the CMA No.16471 of 2024 and the instant petition.

4. The learned counsel for Respondent No. 3 argued for the dismissal of the petition, primarily on the ground of Res Judicata and the inapplicability of the PMAP-2006 policy to the Petitioner's case. He argued that the current petition is an attempt to re-agitate the same issue, i.e, contract appointment that was already

decided by this court in the earlier petition C.P. No. D-1267/2010 between the same parties. Citing Supreme Court rulings in the case of Ch. Riaz Ahmed Khan Vs Muhammad Anwar Khan, **PLD 2003 SC 884**, the counsel asserted that a final judicial decision on the same subject matter cannot be contradicted in subsequent litigation. The claim that the Petitioner was appointed under the PMAP-2006 policy is incorrect and misleading. The Petitioner's father died on October 6, 2004. The policy in vogue at that time allowed contract appointments only for posts of BS-1 to BS-10. The latter PMAP-2006, which allows appointments up to BPS-15, applies only to cases where the civil servant's death occurred after July 1, 2005. Applying the PMAP-2006 retrospectively is not permissible under the Supreme Court parameters. Therefore, the Petitioner's initial appointment as UDC (BS-9) was correctly bracketed under the earlier policy, O.M. dated March 21, 2000, as amended. The Petitioner's current post as Assistant (BS-15) is argued to be illegal/unlawful and in breach of the governing O.M. The Respondents' counsel contended that they have always treated the Petitioner in accordance with the Constitution and have not committed any violation of law, contrary to the Petitioner's allegations. The Petitioner is the one who has "habitually violated the law." Based on these points, the Respondent counsel prays for the dismissal of the CMA as well as the instant petition.

5. The Learned Assistant Attorney General's argument centers on the distinction between two government policies and asserts that the Petitioner is not entitled to regularization under the policy applicable to his case. She added that there were/are Two Separate Policies for deceased employees. The Federal Government has two distinct, prospectively applied policies for families of deceased civil servants, and the case of the petitioner falls under the restrictive "guidelines." The Petitioner's father died on October 6, 2004. Since the death occurred before June 1, 2005, the Petitioner's case is governed solely by the Guidelines for Contract Appointment. Under these guidelines, the petitioner was only entitled to a contract post in BS-10 or below. Therefore, the Petitioner had no right to demand or seek appointment to the post of Auditor/Inspector (BS-14) or Assistant (BS-15), as this was outside the scope of the applicable policy. The Petitioner is a contract employee of the Federal Board of Revenue, bound by the terms of the Guidelines. Since the Guidelines do not contain any provision for regularization, the Petitioner's plea of "legitimate expectation" is inapplicable. The principle of estoppel applies, meaning the Petitioner is bound to follow the terms and conditions of his contract employment only.

6. Heard learned counsel for the parties and perused the available record.

7. Facts of the case have already been narrated; however, the only issue before this Court is whether the petitioner's service could be regularized in terms of the policy

decision of the respondents; and whether the decision of the Supreme Court in the case of General Post Office, Islamabad & others vs Muhammad Jalal, **PLD 2024 SC 1276** has effect in the case of the petitioner. This seminal judgment comprehensively addresses the practice of appointments based on a son/deceased quota. The pertinent Paragraphs, No.18, 19, 23, and 25, provide authoritative guidance on the matter at hand. Consequently, it is judicious to reproduce the relevant excerpts as follows:

“18. The widow/widower, the wife/husband and the dependent children of a civil servant who dies during service or becomes permanently disabled/invalidated/incapacitated for further service and takes retirement from service get pensionary and other benefits from the public exchequer, to which they are entitled. However, the above mentioned rules, policies, OMs, etc. which secure or provide appointments in different grades, without open advertisements and competition, to the widow/widower, wife/husband or a child of a civil servant of the Federal and Provincial Governments, who dies during service or becomes permanently disabled/invalidated/incapacitated for further service and takes retirement from service, is ex facie discriminatory against the other or ordinary citizens of Pakistan and the same cannot be termed as a reasonable classification as their object is to give an advantage by excluding others, which is not permissible under Article 25 of the Constitution. Article 27 of the Constitution, which specifically attends to the service of Pakistan, prohibits discrimination in services.

19. The Government and public sector employment cannot be allowed to be parcelled out to the functionaries of the State. These jobs neither are nor can be made hereditary. The Constitution stipulates that equal employment and economic opportunities must be provided to all citizens. Economic justice, if we may add, is a component of social justice which focuses on creating equal opportunities for all within a society in all aspects.”

8. The jobs neither are nor can be made hereditary, the order stated, adding that the constitution of Pakistan stipulated that equal employment and economic opportunities must be provided to all citizens. However, the Office Memorandum (O.M.) from February 7, 2025, announces the withdrawal of the employment provision under the Prime Minister's Assistance Package (PMAP) for families of government employees who die in service. The provision allowing employment under the PMAP is withdrawn for cases involving in-service deaths of civil servants. This change is effective from October 18, 2024, the date of the Supreme Court's judgment in *C.P. No. 1390/2021*. All other benefits under the PMAP for families of deceased civil servants remain admissible. Appointments for the legal heirs of martyred personnel (Law Enforcement Agencies or civil servants killed in terrorist activities). Appointments already made for the widow/widower, wife, husband, or child of deceased civil servants. This change was made in compliance with a Supreme Court judgment. Since the petitioner was earlier appointed to the subject post and the decision of the Supreme Court has been taken care of by the respondents in the subject OM, as such, the case of the petitioner prima facie is not affected. However, a new deployment has been made in the intervening period. The petitioner has been relegated to a lower position vide order dated 25.7.2024; as such, the petitioner intends to amend the petition, which CMA is hereby allowed, let the petition be amended accordingly.

9. The office order dated 25.7.2024 cancels the petitioner's appointment as Assistant (BPS-15) and reverts him to his previous post of UDC (BS-9/11). Key Points for cancellation are that the petitioner was initially appointed as UDC (BS-9) on a two-year contract on November 20, 2007, under the Prime Minister's Assistance Package (PMAP). This Court directed that he be "considered" for the post of Auditor (BS-14) if he met the criteria, but otherwise, he was to continue as UDC. He was later appointed as Assistant (BPS-15) on January 10, 2018. The Establishment Division pointed out that the PMAP allowing appointments up to BPS-15 is only for cases where the civil servant's death occurred after July 1, 2005. petitioner's father died on October 6, 2004, before the July 1, 2005, cut-off. They finally concluded that the BPS-15 appointment was made on a "misinterpretation" of this court's judgment, and he was "never legally eligible" for the post. As such, the appointment of the petitioner as Assistant (BPS-15) vide letter dated January 10, 2018, is cancelled *ab initio* (from the beginning). However, the petitioner was allowed to continue his service as UDC (BS-11) on the terms and conditions of his initial contract appointment.

10. Prima facie, this office order negates the earlier decisions of this Court merged into the order of the Supreme Court. Petitioner could not be demoted to the post of UDC from Assistant at the first instance, as he had been working on the subject post, as he was offered such appointment by the competent authority in terms of the decisions of this Court.

11. The learned counsel for the petitioner submitted that the Supreme Court in the case of The Chief Commissioner, Regional Tax Officer, Bahawalpur Vs Shaheen Yousaf reaffirmed that compassionate employment is a legal entitlement, not an act of state generosity, and must not be made contingent on a woman's marital status. It was observed that, though the O.M. was later withdrawn on 7.11.2024, issued under the Prime Minister's Assistance Package, the Supreme Court examined its legal implications and declared it discriminatory, arbitrary, and constitutionally unjustifiable. The petition challenging the judgment in favor of the widow was dismissed vide judgment dated 16.4.2025. At this stage, the learned Assistant Attorney General stated that the employment provision of the Prime Minister's Assistance Package (PMAP) was withdrawn on October 18, 2024, due to a Supreme Court judgment. While other benefits of the package remain, the option for new employment under the PMAP is no longer available for in-service deaths. Previously, the package allowed for both contract and regular appointments. However, in 2022, the government shifted policy to favor regular appointments over contracts to align with the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973.

12. Adverting to the question of regularization of service of the petitioners, we may observe that the law on the regularization of service is clear in its concept, according to which regularization and permanent absorption must be granted strictly under the rules of recruitment in force. Principally, this Court, while exercising powers under Article 199 of the Constitution, cannot issue directions for regularization, absorption, or permanent continuance of service of an employee, unless the employee claiming regularization has been appointed in an open competitive process, in pursuance of regular recruitment, under the relevant rules against a sanctioned vacant post, whereas in the present case the service of the petitioner was hired as **UDC (BS-11)** in 2007 under the PMAP. He was later promoted to **Assistant (BPS-15)** on January 10, 2018, following a court direction to "consider" him for a higher post. Finally, he was appointed as Assistant (BPS-15) and continued to hold the post as such the impugned order dated 25.07.2025 is set at naught accordingly and his unilateral cancellation is held not appropriate as he was not heard on the subject issue before taking adverse action under the garb of a decision of the Establishment Division and needs to be recalled by the respondent department forthwith and he be allowed to continue on the subject post till the respondent department decides his issue of regularization of his service as per law and policy, without discrimination, after hearing him, in terms of the decision of the Supreme Court on the subject issue within three months of the date of this order. This petition stands disposed of in the aforesaid terms.

HEAD OF CONST. BENCHES

JUDGE