

HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD

C.P. No.D-1730 of 2024

[Abdul Wahid and Others vs. Province of Sindh and Others]

BEFORE:

**JUSTICE ADNAN-UL-KARIM MEMON
JUSTICE RIAZAT ALI SAHAR**

Mr. Ali Asadullah Bullo, advocate for petitioners

Mr. Rafique Ahmed Dahri, Assistant A.G. Sindh

Date of hearing & decision: 28.11.2025

ORDER

ADNAN-UL-KARIM MEMON J.- The petitioners, who are serving as Head Masters / Mistresses in the Education and Literacy Department, Government of Sindh, have challenged the letter dated 21.08.2024 issued by the Accountant General Sindh, through which directions were given to the concerned District Accounts Officers to recover the annual increments that had been granted to the petitioners during their contractual service.

2. Learned counsel submits that the petitioners were appointed as Head Masters/Mistresses in 2017 on contract basis after qualifying the test conducted by IBA Sukkur, and their contracts were extended periodically; that, pursuant to directions issued by this Court in C.P. No. D-2431 of 2021 vide order dated 28.05.2021, the cases of the petitioners and other similarly placed employees were referred to Sindh Public Service Commission for scrutiny of their eligibility and fitness for regularization. After completion of scrutiny process, the petitioners were regularized through Notification dated 09.08.2023. However, nearly six months later, the respondent Accountant General Sindh issued the impugned letter directing the concerned District Accounts Officers to recover the annual increments granted to the petitioners during their contractual service. He contends that the respondents are obligated to protect the pay of all government servants who have already been receiving pay and benefits equivalent to those of regular employees, and any action that adversely affects their right to livelihood amounts to colorable exercise of authority. He further argues that, in light of the principle embodied in Section 21 of the General Clauses Act, 1897, an order passed by a competent authority can only be withdrawn, amended, or modified by that very authority; whereas in the present case, the impugned action has been taken by an authority lacking such power. He submits that the petitioners were serving against regular posts and were therefore rightly granted annual increments, which cannot now be withdrawn by the Accountant General Sindh. He adds that there are

numerous judgments of Supreme Court in which such actions have been consistently disapproved. He prayed to allow the petition.

3. Learned Assistant Advocate General Sindh opposed the petition, arguing that the petitioners were contractual employees and, during that period, were not entitled to annual increments, which were/are admissible only to permanent or regular employees. He therefore prayed for dismissal of the petition.

4. We have heard learned counsel for the parties and examined the material available on record.

5. The impugned letter states that, under Rule 7 of the Sindh National Scales of Pay Rules, an employee must complete a minimum of six months of service after regularization to be eligible for an annual increment, as further confirmed by Finance Department letter No. FD(SR-I)01(21)2023-24. Since the petitioners were initially appointed on contractual basis, they were considered not entitled to any increments during that period. Accordingly, the Accountant General's office held that all undue increments since the date of appointment were subject to recovery. However, the Finance Division, Government of Pakistan, has received proposals regarding protection of pay for gazetted contract employees upon regularization. While it is emphasized that the existing rules do not automatically provide for such protection, courts have consistently recognized that pay should be safeguarded. Following a review of judicial pronouncements, general policy guidelines were issued, stating that the pay of gazetted contract employee will be protected upon regularization or regular appointment, subject to the following conditions: (i) the contract was made in a sanctioned BPS under standard terms issued by the Establishment Division; (ii) the employee applied through proper channels and was relieved by the appointing authority (except when regularizing in the same post); (iii) the regularization is approved by the competent authority; (iv) there is no break between contract and regular service; (v) service rendered on contract does not count for pension or gratuity; and (vi) pay protection does not apply if appointed from a higher to a lower grade. However, pay fixation in accordance with these guidelines was/is required to be carried out by the Accountant General of Pakistan Revenue (AGPR).

6. Be that as it may, the present case needs to be examined in the context of the petitioners' regularization through Sindh Public Service Commission (SPSC), which has been an ongoing process since their initial appointment through a competitive procedure, as the petitioners have served for several years on contract basis and having lawfully earned annual increments/ allowance during that contract period by the orders of competent authority, were subsequently regularized by Notification dated 09.08.2023 which was on going process. Upon such regularization, the petitioners attained the status of regular government

servants. The increments earned during the contract period, having been validly paid under orders of the competent authority, constitute lawful remuneration already earned and cannot be retrospectively treated as overpayment or undue benefit simply because regularization was effected at a later date. However, to treat those increments as subject to recovery by ordering refund or deduction amounts to depriving the petitioners of their legitimate and lawfully earned pay by way of allowance. It impairs their right to livelihood, financial dignity, and legitimate expectation, and would amount to a colorable exercise of power by the respondent Accountant General. That there exists a binding precedent of the Supreme Court of Pakistan in which non-gazetted contract employees, upon regularization, have been held entitled to “pay protection”. The increments accrued during the contract period are to be preserved and converted to a “Personal Allowance,” rather than being wiped out, so that the regularized employee does not suffer a reduction in livelihood or pay a result inconsistent with the purpose of regularization.

7. The very object of regularization is to secure for the employee a stable, “civil servant” status which comes with at least equivalent terms and conditions of service as enjoyed under contract, if not better; regularization cannot lawfully result in reducing or reversing pay/benefits already acquired on lawful contract employment, therefore, petitioners are entitled to protection of pay, the annual increments/benefits granted during the contract period stand protected at minimum as “protected allowances” and the impugned directive for recovery needs to be set aside.

8. In the interest of justice, equity, and to uphold the constitutional guarantee of dignity of work and livelihood, this Court deem it proper to declare that no recovery of increments is justified at this stage, and issue directions that the increments already granted to continue to be treated as part of petitioners’ emoluments or at least converted into a permanent protected allowance.

9. This Petition stands disposed of in the above terms.

JUDGE

JUDGE

Karar Hussain/PS*