

# IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

**CP No.D-1357 of 2020**

(Muhammad Haris and 30 others v. Province of Sindh and 02 others)

**C.P No.D-1271 of 2022**

(Naimatullah v. Province of Sindh and 02 others)

**C.P No.D-3358 of 2022**

(Ms. Sidra Rahmat v. Province of Sindh and 02 others)

**C.P No.D-1600 of 2022**

(Afzal Shaikh v. Province of Sindh and 02 others)

**C.P No.D-1601 of 2022**

(Muhammad Shareef v. Province of Sindh and 02 others)

**C.P No.D-1931 of 2022**

(Farzand Ali and another v. Province of Sindh and 02 others)

**C.P No.D-3139 of 2022**

(Farooq Hussain v. Province of Sindh and 02 others)

**C.P No.D-3357 of 2022**

(Naqash Mukhtiar v. Province of Sindh and 02 others)

**C.P No.D-8137 of 2022**

(Sajid v. Province of Sindh and 02 others)

**C.P No.D-5569 of 2022**

(Zahid Ali and 03 others v. Province of Sindh and 02 others)

**C.P No.D-4372 of 2022**

(Adil Ishrat v. Province of Sindh and 02 others)

**C.P No.D-4830 of 2022**

(Mohammad Owais Khan v. Province of Sindh and 02 others)

Mr. Malik Naeem Iqbal, advocate for the petitioners in C.P No.D-1357/2020.

Mr. Haider Waheed, advocate for respondent No.2 in C.P No.D-1357/2020.

Mr. Mukesh Kumar Khatri, advocate for the petitioners in C.P Nos. 1271, 3358, 1600, 1601, 1931, 3139, 3357, 8137, 5569, 4372, 4830 of 2022.

Shaikh Zahid Mehmood, advocate

Mr. Abdul Waheed Siyal, advocate for respondents / JSMU in C.P Nos. 1271, 3358, 1600, 1601, 1931, 3139, 3357, 8137, 5569, 4372, 4830 of 2022.

Mr. Ali Safdar Depar, Assistant Advocate General Sindh.

Dates of hearing : 21.2.2023 and 13.3.2023.  
Date of order : 15.5.2023.

## **ORDER**

**ADNAN-UL-KARIM MEMON, J.** – Through these petitions, the petitioners are seeking directions to Jinnah Sindh Medical University (JSMU) to treat them as regular employees, and notification in respect of their regularization in terms of their current designations may be issued.

2. The case of the petitioners is that in pursuance of advertisements published in newspapers in the year 2016, they were appointed in respondent-university to different budgetary posts, however, on contract basis; therefore, their services ought to be treated as regular service under the Jinnah Sindh Medical University Act, 2013 and Rules framed thereunder.

3. Malik Naeem Iqbal, learned counsel for the petitioners in C.P. No. D-1357 of 2020 has argued that despite availability of sanctioned posts with the respondent-University, they are reluctant to regularize the services of the petitioners. Learned counsel argued that the petitioners are working since 2007 and onwards on contract basis and the services of their colleagues have been regularized, however, they have been ignored, which is discriminatory attitude. Learned counsel referred to the Dow University of Health Sciences (Erstwhile Dow Medical College) which was conferred the status through the Dow University of Health Sciences Act, 2004 vide Notification dated 14.9.2015, therefore, the petitioners ought to have been treated in a manner similar to the employees of Dow University of Health Sciences. Learned counsel also referred to the letter dated 18.4.2018 issued by the Government of Sindh decided to regularize the services of contract employees working in the government owned and controlled universities as such the case of the petitioners falls within the ambit of policy decision. That the petitioners have been appointed through competitive process as such the respondents are not left to pick and choose policy in regularization process. Learned counsel further argued that regularization of service is based on equity and length of service and the practice of government of keeping employees on contract basis for long

period of time is illegal. Learned counsel emphasized that the petitioners have sufficient experience and they have been working for a sufficient period of time, yet they have not been given an opportunity to serve the respondent-University as regular employee which is violative of fundamental rights of the petitioners guaranteed under the constitution. Learned counsel referred to the various documents attached with the memo of petitions and submitted that the law does not debar the respondent-University to regularize the services of the petitioners. Learned counsel further argued that the question of statutory rules and non-statutory of the respondent-University is irrelevant at this stage on the premise that for regularization of service statutory rules are not required to be looked into as the same rules will come into picture when the services of the petitioners once regularized. He prayed for allowing the instant petitions in terms of the ratio of the decisions made by the Supreme Court in the cases of Zarai Taraqiati Bank Ltd v. Muhammad Asim Rafique and others, **2016 SCMR 1756**, Qayyum Khan v. Divisional Forest Officer, Mardan and others, **2016 SCMR 1602**, Government of Khyber Pakhtunkhwa through Secy. Agriculture and others v. Adnanullah, **2016 SCMR 1375**, Messrs State Oil Company Limited v. Bakht Siddique and others, **2018 SCMR 1181**, Ahsanullah and 11 others v. Federation of Pakistan through Secretary and 4 others, **2016 PLC (CS) 477**, Dr. Bashir Ahmed and others v. Province of Sindh through Chief Secretary and others, **2016 PLC (CS) 179**, Ayaz Ahmed Memon v. Pakistan Railways through Chairman and 8 others, **2017 PLC (CS) 226**, Nabeela Ashfaq v. Federation of Pakistan through Secretary Defence and 3 others, **2020 PLC (CS) 24**, Government of NWFP through Secretary Education and others v. Rukhsar Ali and 24 others, **2005 PSC 1261**, and Abdul Hameed Anjum and others v. Federation of Pakistan and others, **PLD 2010 Supreme Court 857**.

4. Mr. Mukesh Kumar Khatri advocate for the petitioners in C.P. Nos. D-1271, 3358, 1600, 1601, 1931, 3139, 3357, 8137, 5569, 4372, 4830 of 2022 has adopted the arguments of Malik Naeem Iqbal advocate.

5. Mr. Haider Waheed, advocate for respondent No.2 in C.P No. D-1357/2020 argued that regularization of service is the prerogative of Executive of the respondent university if the statute provides and not otherwise; and, it cannot be arbitrarily interfered with by this Court as, such interference militate the mandate provided to this Court under Article 199 of the Constitution and, it must be exercised keeping in mind the fundamental principles of judicial review and tracheotomy of powers. He further argued

that long and satisfactory contractual service does not confer any right on an employee to claim regularization of service at all, which is based on statutory protection; that it is by now a settled principle of law that conversion from contractual service to regular appointment requires statutory support, which factum is missing in the present case; that in absence of any law, policy, or rule, an employee cannot knock the door of this Court for regularization of his/her services under Article 199 of the Constitution; that the petitioners at the time of appointed had agreed to the terms and conditions of their contract services and their terms of service does not envisage any clause for regularization of their services, therefore these petitions are not maintainable; therefore, he prayed for dismissal of the same.

6. Mr. Abdul Waheed Siyal advocate for the respondent / JSMU in C.P. Nos. D-1271, 3358, 1600, 1601, 1931, 3139, 3357, 8137, 5569, 4372 and 4830 of 2022 has adopted the arguments of Mr. Haider Waheed advocate for respondent No.2 in C.P. No. D-1357 of 2020.

7. Mr. Ali Safdar Depar, learned Assistant Advocate General has also adopted the arguments of Mr. Haider Waheed and prayed for dismissal of the instant petitions.

8. We have heard learned counsel for the parties and perused the material available on record with their assistance and the case law cited at bar.

9. To properly understand the controversy, it would be appropriate to have a glance at the university code to see whether it provides a mechanism for regularization of services of its employees or otherwise.

10. It is an admitted fact that the petitioners were employed on contract basis for a fixed term and their services are continuing on the same terms and conditions. The argument that their colleagues were given relief; therefore, they cannot be discriminated against is misconceived as each and every case has to be analyzed on its own facts and circumstances, and relief which is available to a party in one set of circumstances is not always available to another party in a different set of circumstances like those before us. Secondly, regularization of service takes place only when statute provides; in absence of any law / order / policy providing the mechanism of regularization, the petitioners cannot claim regularization of their services based on discrimination. It is settled law that continuity in service is required

for seeking regularization. Since the contracts of the petitioners have not yet expired, it could not be held by any stretch of imagination that there was a break in the continuity of their service. The respondent university was at liberty to continue the services of the petitioners under the terms and conditions of contract which were accepted by the petitioners when they accepted contractual employment. This Court could not amend or alter the terms and conditions of contract of the petitioners in exercise of its constitutional jurisdiction under Article 199 of the Constitution. Reliance in this regard is placed on the case of *Khushal Khan Khattak University through Vice-Chancellor and others v. Jabran Ali Khan and others* (2021 SCMR 977) wherein, in an identical situation, this court held as follows:-

“The learned counsel for the Respondents has not been able to show us any law which conferred a right upon the Respondents to be regularized. The assertion of the learned ASC that since others were regularized, the Respondents should also be regularized despite there being no statutory basis has not impressed us. As noted above, the Respondents could not claim regularization as a matter of right. Even otherwise, all the appointment orders of the Respondents clearly state that they would have no right to claim regularization. Therefore, the Respondents cannot disown the terms and conditions of their own employment contracts and claim permanent employment when at the very inception of their employment they had accepted contractual employment on the conditions that they would have no right to claim regularization”

11. The aforementioned excerpt makes it amply clear that this Court in its Constitutional Jurisdiction cannot alter the scope of terms that have been agreed upon by the parties and put an additional burden upon the employer. At best, a contract employee can approach the appropriate forum for recovery of damages against an employer for breach of contract, if a case is made out against the employer.

12. Primarily, the direction for regularization, absorption, or permanent continuance of service cannot be issued unless the employee claiming regularization had been appointed in pursuance of regular recruitment under relevant rules and against the sanctioned vacant posts. In principle, a contractual employee who wishes to be regularized must demonstrate the statutory basis for such claim, in absence of which, relief cannot be granted solely on the principle of similarly placed persons. On the aforesaid proposition, reliance is placed on the case of *Faraz Ahmed Vs the Federation of Pakistan and others* (2022 PLC 198).

13. This Court in exercise of constitutional jurisdiction cannot assume the role of appointing authority and direct the employers to amend / alter the terms and conditions in favor of employees which have been agreed upon by them. The petitioners' counsel failed to point out any *mala fide* or malice on the part of respondent university which deprived the right of permanent absorption of the petitioners in respondent university. Since the contract period of the petitioners is continuing and there is no statutory backing for regularization of service of the petitioners; therefore, this Court cannot direct the respondents to regularize the petitioners. On the aforesaid proposition we are guided by the decisions of Supreme Court in the cases of Government of Khyber Pakhtunkhwa, Workers Welfare Board through Chairman v. Raheel Ali Gohar and others (2020 SCMR 2068), Khushal Khan Khattak University through Vice-Chancellor and others v. Jabran Ali Khan and others (2021 SCMR 977), the Government of Khyber Pakhtunkhwa and others v. Saeed ul Hassan and others (2021 SCMR 1376), Vice-Chancellor, Bacha Khan University Charsadda, Khyber Pakhtunkhwa and others v. Tanveer Ahmad and others (2022 PLC (C.S.) 85), Pakistan Telecommunication Company Ltd. v. Muhammad Samiullah (2021 SCMR 998), Government of Khyber Pakhtunkhwa through Secretary Forest, Peshawar and others v. Sher Aman and others (2022 SCMR 406), Deputy Director Finance and Administration FATA through Additional Chief Secretary FATA, Peshawar and others v. Dr. Lal Marjan and others (2022 SCMR 566) and Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others v. Intizar Ali and others (2022 SCMR 472).

14. These petitions being found to be misconceived are dismissed accordingly.

**JUDGE**

**JUDGE**

Karar\_Hussain\*  
>>