

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Yousuf Ali Sayeed, J.
Adnan Iqbal Chaudhry J.
Agha Faisal, J.

CP D 875 of 2020

Muhammad Arif & Others
vs.
Federation of Pakistan & Others

(And connected matters, particularized in the Schedule¹ hereto.)

Malik Naeem Iqbal, Mohamed Vawda, Hamza Hidayatullah, Muhammad Nasir, Talha Abbasi, M.B. Khatyan, Imran Taj, Syed Shoa-un-Nabi, Saqib, Khan Zai, Khurram Memon, Ameer Ali, Saqib Soomro, Muhammad Khan Lakho, Ghulam Shabir Shar, Muhammad Asif Arain, Atia Kausar, Ravi Pinjani, Vera Awais, Chaudhry Muhammad Ashraf Khan, Uzma, Khadim Hussain, Syed Hussain Haider, Inayat Ali Mirza, Imtiaz Ali Mirza and Ghulamullah, Advocates for the petitioners.

Ijaz Ahmed Zahid, Ghazi Khan Khalil, Qazi Umair Ali, Aleena Ahmed, Ameer Nausherwan Adil, Zeeshan Ahmed, Abdul Hakeem Junejo, Abdul Razzaque, Hayat Muhammad Junejo, Kumail Abbas, Muhammad Inzimam Sharif, Faisal Mahmood Ghani, Nida Faisal Ghani, Asim Iqbal, Farmanullah, Mukesh Kumar G. Karara, Nabi Bux Leghari, Sajid Ali, Kashif Hanif, Waqar Ahmed Zahid and Hashmatullah, Advocates; Qazi Ayazuddin Qureshi (Assistant Attorney General), Amaar Saleem Butt (Manager Legal SSGC), Raja Love Kush (Deputy Manager Legal), Syed Asad Abbas Naqvi (Deputy Chief Manager legal), and Asma Zehra (Deputy Manager, Legal, SSGC) for the respondents.

Dates of hearing : 15.05.2023; 11.09.2023; 18.09.2023;
12.02.2024; 19.02.2024.

Date of announcement : 22.04.2024

JUDGMENT

Agha Faisal, J. Three thousand three hundred and fifty nine petitioners have *collectively* filed these forty eight petitions, requiring this Court, in its writ jurisdiction, to judge their *individual* claims for *regularization* in Sui Southern Gas Company Limited (“SSGC”); premised upon their averment of having rendered contingent / contractual services to SSGC, though third party companies or otherwise.

Factual context

¹ The Schedule hereto shall be read as an integral constituent hereof.

2. Briefly stated, SSGC is a public limited company engaged in the business of transmission and distribution of natural gas². The shares in SSGC are listed and traded on the bourse³. The petitioners seek regularization on the averment of terminated or subsisting contractual / contingent employment with the company or third party entities, rendering contractual services to SSGC. Despite the manifest absence of any admission of facts or each individual claim having been subjected to the anvil of inquiry / evidence / trial and notwithstanding SSGC being devoid of any statutory rules, petitioners have invoked the writ jurisdiction of this Court *en masse* seeking regularization.

Judicial history

3. The Supreme Court was seized of cross petitions, in the SSGC case⁴; one set filed by alleged employer/s and the other by purported employees. In the first set, challenge was made to the judgment of this Court in *Toto*⁵, whereby writ petitions seeking regularization were considered to be maintainable and the matter was remanded to SSGC to consider the factual aspect of entitlement. In the latter set, judgment of this Court in *Muhammad Arif*⁶ was assailed, whereby the petitions seeking regularization in *pari materia* circumstances were found to not be maintainable.

4. It was observed by the Supreme Court that the two judgments arrived at contradictory findings on the pivotal question of maintainability, hence, in application of the *Multiline*⁷ principles the respective judgments were set aside and matters were returned to the High Court for *de novo* determination of the question of maintainability; by a larger bench. The larger bench was also invited to express its view on the issue of entitlement of the claimants. In pursuance of the aforementioned order, this larger bench was constituted and has heard the matter afresh upon the issues identified by the Supreme Court.

Applicability of the Multiline principles

² https://www.ssgc.com.pk/web/?page_id=68.

³ <https://dps.psx.com.pk/company/SSGC>.

⁴ *SSGCL vs. Toto & Others* and connected matters (*Civil Petition 6164 of 2021* and connected petitions); order dated 01.12.2022 (“SSGC case”).

⁵ Per *Adnan Karim Memon J* in *Toto & Others vs. Federation of Pakistan* (CP D 405 of 2019 - *Hyderabad*) and connected matters; judgment dated 20.10.2021 (“*Toto*”).

⁶ Per *Muhammad Junaid Ghaffar J* in *Muhammad Arif vs. Federation of Pakistan* (CP D 875 of 2020) and connected matters; judgment dated 26.08.2022 (“*Muhammad Arif*”).

⁷ *Multiline Associates vs. Ardeshir Cowasjee* reported as *PLD 1995 Supreme Court 423*.

5. At the very onset, this Court ought to consider the concern of perceived inconsistency between the latter judgment in *Muhammad Arif*⁸ with the prior in *Toto*⁹. *Muhammad Arif* proceeded to determine the petitions as not maintainable; as mandated by the binding precedent of the Supreme Court in *Saeed Ahmed Khoso*¹⁰, *Zeeshan Usmani*¹¹, *Khushal Khan Khattak*¹² and *PEPCO*¹³ respectively.

6. It is imperative to observe that the first two judgments mentioned supra, *Saeed Ahmed Khoso* and *Zeeshan Usmani*, have been delivered under *pari materia* circumstances in the case of SSGC itself. *Muhammad Junaid Ghaffar J* concluded in *Muhammad Arif* that in view of the findings of the Supreme Court on identical facts, wherein it was held that such constitutional petitions are not maintainable against SSGC, as it has no statutory rules and relationship, if any, is to be governed by the master servant principles, the petitions are dismissed; on the touchstone of maintainability.

7. The judgment in *Toto* was delivered on 20.10.2021, before the Supreme Court pronouncements in *Saeed Ahmed Khoso* and *PEPCO*, however, makes absolutely no reference to the prior in time squarely binding edicts in *Khushal Khan Khattak* and / or *Zeeshan Usmani*; the latter having been delivered in the case of SSGC itself.

8. Article 189 of the Constitution expresses that a decision of the Supreme Court, to the extent that it decides a question of law or is based upon or enunciates a principle of law, shall be binding on all other courts in Pakistan and certainly this diktat includes the High Courts. The rendering of judgments in apparent indifference to Supreme Court authority has been deprecated most recently by the apex court in *Pervez Musharaf*¹⁴. *Syed Mansoor Ali Shah J* observed that failing to adhere to the judgments and orders of the Supreme Court undermines the credibility and effectiveness of the entire judicial system established by the Constitution. It was stressed that such judgments are binding on all judicial and executive authorities of the country per Articles 189 and 190 of the Constitution. The judgment accentuated that disregard of

⁸ Per *Muhammad Junaid Ghaffar J* in *Muhammad Arif vs. Federation of Pakistan (CP D 875 of 2020)* and connected matters; judgment dated 26.08.2022 (“*Muhammad Arif*”).

⁹ Per *Adnan Karim Memon J* in *Toto & Others vs. Federation of Pakistan (CP D 405 of 2019 - Hyderabad)* and connected matters; judgment dated 20.10.2021 (“*Toto*”).

¹⁰ *Sui Southern Gas Company Limited vs. Saeed Ahmed Khoso* reported as 2022 SCMR 1256.

¹¹ *Sui Southern Gas Company Limited vs. Zeeshan Usmani* reported as 2021 SCMR 609.

¹² *Khushal Khan Khattak University vs. Jabran Ali Khan* reported as 2021 SCMR 977.

¹³ *Pakistan Electric Power Company vs. Syed Salahuddin* reported as 2022 SCMR 991.

¹⁴ Per *Syed Mansoor Ali Shah J* in *Taufiq Asif vs. General (retired) Pervez Musharaf & Others (Civil Petition 3797 of 2020)* and connected matters; yet unreported judgment dated 10th January 2024.

Supreme Court judgments *inter alia* unsettles the integrity and sanctity of the Supreme Court and renders inconsistent High Court pronouncements not only without jurisdiction but also unconstitutional.

9. On the touchstone of the aforesaid, this Court is, respectfully, constrained to express its inability to treat *Toto*¹⁵ as good law.

10. The judgment in *Muhammad Arif* was rendered subsequent in time to the edicts of the Supreme Court in *Saeed Ahmed Khoso*¹⁶, *Zeeshan Usmani*¹⁷, *Khushal Khan Khattak*¹⁸ and *PEPCO*¹⁹ and in *prima facie* conformity therewith. Scrutiny of the judgment in *Muhammad Arif* does not demonstrate that the Division Bench was assisted with *Toto*²⁰, however, even otherwise the conclusion drawn would likely remain the same since *Muhammad Arif* applied the binding law illumined by the Supreme Court.

Scope of determination

11. Notwithstanding this endeavor at demystifying the applicability of the *Multiline* principles, this Court is bound to execute the command of the SSGC case²¹ and determine the question of maintainability as well as consider the aspect of entitlement. The present petitions were advocated exclusively to such extent²² and shall be determined vide this common judgment.

Admitted facts

12. The *admitted* pertinent facts are that that each of the three thousand three hundred and fifty nine petitioners herein have distinct individual claims for regularization and not a single such claim has been subjected to the anvil of scrutiny, evidence and / or plenary determination; the claim of each petitioner emanates from a past contract, with a third party or otherwise, and irrespective of SSGC not being privy thereto or such contracts having expired, no such instrument has been represented to confer any rights for

¹⁵ Per Adnan Karim Memon J in *Toto & Others vs. Federation of Pakistan (CP D 405 of 2019 - Hyderabad)* and connected matters; judgment dated 20.10.2021 (“*Toto*”).

¹⁶ *Sui Southern Gas Company Limited vs. Saeed Ahmed Khoso* reported as 2022 SCMR 1256.

¹⁷ *Sui Southern Gas Company Limited vs. Zeeshan Usmani* reported as 2021 SCMR 609.

¹⁸ *Khushal Khan Khattak University vs. Jabran Ali Khan* reported as 2021 SCMR 977.

¹⁹ *Pakistan Electric Power Company vs. Syed Salahuddin* reported as 2022 SCMR 991.

²⁰ Per Adnan Karim Memon J in *Toto & Others vs. Federation of Pakistan (CP D 405 of 2019 - Hyderabad)* and connected matters; judgment dated 20.10.2021 (“*Toto*”).

²¹ *SSGCL vs. Toto & Others* and connected matters (*Civil Petition 6164 of 2021* and connected petitions); order dated 01.12.2022 (“*SSGC case*”).

²² It merits mention that no other issue was placed / agitated before this Court, irrespective of the pleadings in the respective petitions.

regularization in SSGC; no challenge whatsoever has been brought by any petitioner before any relevant fora of first instance; the nature of the relationship averred by the petitioners, with third parties or otherwise, is that of master and servant; SSGC does not have any statutory rules; and that there is absolutely no statutory basis for the petitioners to sustain their claim for regularization.

Respective arguments

13. The petitioners' learned counsel articulated that each petitioner was entitled to seek regularization in SSGC through writ jurisdiction. The submission was rested upon averments that a writ can be issued to a company if some shareholding thereof is held by the Government; the absence of statutory rules is no hindrance in such regard; efflux of time, irrespective of whether service is alleged to be rendered to a third party, creates a vested right to the relief sought; regularization is a fundamental right; and finally that the enterprise of outsourcing / third party contractors be declared as contrary to fundamental rights enshrined in the Constitution, hence, any nexus therewith be deemed to be nexus with SSGC in the present facts and circumstances²³.

14. It was the respondents' case²⁴ that the question of maintainability was already clinched by the Supreme Court; aptly followed in *Muhammad Arif*²⁵ and a subsequent Division Bench pronouncement of this Court in *Muhammad Umair*²⁶, already having obtained the seal of approval from the Supreme Court in *Muhammad Arshad*²⁷. In addition thereto, a recent judgment of the Supreme Court in *VC Agriculture University*²⁸ was placed on record to address not only the issue of maintainability but also that of entitlement. Learned counsel referred to uncontroverted record on file in order to demonstrate the manifest absence of any entitlement, crystallized or otherwise, of the petitioners to the relief claimed. It was concluded that the petitions merited dismissal forthwith.

²³ Articulated by Mr. Malik Naeem Iqbal, Mr. M B Khatian, Mr. Shoa un Nabi & Mr. Muhammad Vawda in seriatim; adopted by the remaining learned counsel for the petitioners. Despite not having addressed any arguments at the appropriate stage, Mr. Ravi Pinjani also addressed the Court at the rebuttal stage.

²⁴ Articulated by Mr. Ijaz Ahmed Zahid & Mr. Ghazi Khan Khalil in seriatim on behalf of SSGC and adopted by the remaining learned counsel. Mr. Qazi Umair Ali advocated the brief of the third party contractors.

²⁵ Per *Muhammad Junaid Ghaffar J* in *Muhammad Arif vs. Federation of Pakistan (CP D 875 of 2020)* and connected matters; judgment dated 26.08.2022 ("*Muhammad Arif*").

²⁶ *Muhammad Umair & Others vs. Federation of Pakistan & Others (CP D 5333 of 2018)* and connected matters; judgment dated 22.09.2022.

²⁷ Per *Muhammad Ali Mazhar J* in *Muhammad Arshad & Others vs. Federation of Pakistan & Others (Civil Petition 1323-K of 2022)* and connected matters; judgment dated 19.04.2023.

²⁸ Per *Syed Mansoor Ali Shah J* in *Vice Chancellor Agriculture University Peshawar & Others vs. Muhammad Shafiq & Others (Civil Petition 2270 of 2019)* and connected matters; yet unreported judgment dated 17.01.2024.

Regularization

15. Heard and perused. The core issue under deliberation is regularization. The term, by definition, implies the existence of a manifest irregularity, in need of acquiesce, and in the present context it requires recognition of a right of regular / permanent employment by fiction of law, where none exists in fact.

16. While there is a myriad of authority demarcating the pith and substance of regularization in the present context, however, this Court would be hard pressed to better the description and distinction elucidated by the Supreme Court in *VC Agriculture University*²⁹:

“In order to understand the issue at hand, it is expedient to understand the regime of regularization which in essence means to make “regular” or “permanent.” Once the contractual services are regularized, the appointment can become substantive or permanent and cannot be terminated without due process. Therefore, the regularization of a contractual employee is a fresh appointment into the stream of regular appointment.³⁰ The differences between a contractual employee and a regular employee is material for both the employee and the employer and, *inter alia*, include: (i) *Duration of employment*; a contractual employee is usually employed for a specific period or task, with a set end date. (ii) *Benefits*; contractual employee generally do not receive the same benefits or statutory protection as a regular employee. (iii) *Scope of work*; contractual employee is engaged for specific project or task. (iv) *Flexibility*; contractual employee often has more flexibility in terms of work hours and location. (v) *Cost Considerations*: a contractual employee can be less costly in the short term as it doesn’t require benefits and other long-term financial commitments. (vi) *Risk Management*; hiring regular employee is often a long-term commitment, so organizations opt for contractual workers to manage risks associated with fluctuating market demands. Therefore, any institution opting for regularization of its employees must be either mandated by law or must carry out regularization through

²⁹ Per Syed Mansoor Ali Shah J in *Vice Chancellor Agriculture University Peshawar & Others vs. Muhammad Shafiq & Others (Civil Petition 2270 of 2019)* and connected matters; yet unreported judgment dated 17.01.2024.

³⁰ *Province of Punjab through Secretary, Livestock and Dairy Development, Government of Punjab vs. Dr. Javed Iqbal* reported as 2021 SCMR 767.

a well-thought out policy of the institution concerned laying down the criteria and the process for regularization; performance evaluation of the contractual employee must be assessed to determine if the employee meets the standards required for a regular position; there must be availability of positions that match the skills and experience of the contractual employee; the budgetary considerations and financial implication of a regular employee be weighed and considered. There must be a fair assessment of the employee's qualifications, performance and merit, so as to ensure only competent and committed employees be granted permanent employment status.³¹ Regularization is, therefore, not a ritualistic and mechanical exercise. It requires fresh assessment of the candidature of the contractual employee by the competent authority before he is made a regular employee as any such act carries long term financial implications on the institution concerned. The process of regularization is grounded in principles of fairness, openness, transparency, non-discrimination and public interest.³² Regularization therefore has a close nexus with institutional policy and autonomy.”

17. The edict in the SSGC case³³ requires this Court to dwell upon the question of maintainability; essentially of a petition seeking regularization of employment in a public limited company in the material facts and circumstances, therefore, that is the matter to be addressed at first.

Issue of maintainability

Absence of statutory rules

18. The law states that in the absence of statutory rules of service a writ petition, in service matters, ought not to be entertained³⁴. Admittedly, SSGC is devoid of statutory rules. In so far as the issue of functions of the state is concerned, the same was explained by the Supreme Court in the *PIAC case*³⁵ and reiterated recently in the *Pakistan Olympics Association case*³⁶. While

³¹ *Hadayat Ullah vs. Federation of Pakistan* reported as 2022 SCMR 1691; *Syed Mubashir Raza Jaffri vs. Employees of Old Age Benefits Institution* reported as 2014 PLC 428.

³² *Ikhtlaq Ahmed vs. Chief Secretary, Punjab* reported as 2018 SCMR 1120.

³³ *SSGCL vs. Toto & Others* and connected matters (*Civil Petition 6164 of 2021* and connected petitions); order dated 01.12.2022 (“SSGC case”).

³⁴ 2021 SCMR 609; 2019 SCMR 278; PLD 2010 Supreme Court 676.

³⁵ PLD 2010 Supreme Court 676.

³⁶ 2019 SCMR 221.

eschewing a voluminous repetition³⁷ of the law illumined, it would suffice to observe that no case has been set forth before us to suggest that the respondent company, in the business of distributing natural gas, was performing functions connected with the affairs of the state involving exercise of sovereign power³⁸. The Supreme Court has consistently maintained, as seen in *Saeed Khoso*³⁹, *PEPCO*⁴⁰ and *Zeeshan Usmani*⁴¹, that that a writ seeking regularization of service could not be maintained *inter alia* in respect of a company devoid of statutory rules. It may be relevant to mention that *Saeed Khoso* and *Zeeshan Usmani* were in the *specific* context of SSGC itself.

Factual controversy

19. Three thousand three hundred and fifty nine petitioners have invoked the writ jurisdiction of this Court so that their individual claims for regularization may be adjudged. Serious questions of fact have been raised with respect to the status of the petitioners and it was argued that a significant number of them had not been substantiated to even be employees of the relevant third party respondents. *Admittedly*, each claim would merit detailed scrutiny, inquiry and / or evidence, however, the writ jurisdiction could not be considered an amenable forum in such regard⁴². The Supreme Court was seized of a similar matter, pertaining to regularization of alleged third party employees, in *Sohaib Iftikhar*⁴³, wherein it was held that such disputed questions of fact going to the root of the matter were not open to determination by the High Court in writ jurisdiction.

Master servant principles

20. It is the petitioners claim that their relationship was / is contractual in nature and under such circumstances there is no cavil to the applicability thereto of the master servant principles. Invocation of the writ jurisdiction in

³⁷ Per *Mansoor Ali Shah J.* in the yet unreported judgment dated 18.08.2020 in *Farooq Hussain vs. Shaikh Aftab Ahmed (CRP 104-L of 2019 & connected matters)*.

³⁸ PLD 1975 Supreme Court 244; 2000 SCMR 928; PLD 2002 Supreme Court 326; PLD 2005 Supreme Court 806.

³⁹ *Southern Gas Company Limited vs. Saeed Ahmed Khoso* reported as 2022 SCMR 1256.

⁴⁰ *Pakistan Electric Power Company vs. Syed Salahuddin* reported as 2022 SCMR 991.

⁴¹ Per *Sayyed Mazaher Ali Akbar Naqvi J* in *Sui Southern Gas Company Limited vs. Zeeshan Usmani* reported as 2021 SCMR 609.

⁴² 2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415.

⁴³ Per *Umar Atta Bandial J* in *NBP vs. Sohaib Iftikhar (Civil Petition 425-L of 2014)*; Unreported order dated 20.06.2018.

such regard has been deprecated by the Supreme Court *inter alia* in *Raheel Ali Gohar*⁴⁴.

21. The pivot of each of the petitioners' claim is a contract; expired, third party or otherwise. Irrespective hereof, it is *admitted* that not a single contract contains any entitlement for regularization in SSGC. Therefore, the petitioners essentially require this Court to resurrect, amend, alter and / or novate individual contracts in exercise of its writ jurisdiction. The Supreme Court has held in *Khushal Khan Khattak*⁴⁵ that such contractual relationships are governed by the master service principle, hence disentitled to the recourse presently availed, and further that in any event the High Courts lacked jurisdiction to revive, amend and / or alter contracts.

No generic vested right

22. The petitioners' learned counsel had graciously ceded the absence of statutory rules and the general applicability of master servant principles, however, it was insisted that the same presented no bar to the invocation of the writ jurisdiction if a vested right could be demonstrated to have been infringed.

23. This averment has been conclusively dispelled by the Supreme Court *inter alia* in *Khushal Khan Khattak, Sher Aman*⁴⁶ and most recently in *VC Agriculture University*⁴⁷, wherein it has been held that there was no vested right to seek regularization for employees hired on contractual basis unless *inter alia* there is any legal or statutory basis for the same⁴⁸. *Admittedly*, there is no statutory basis for the petitioners to maintain their averment.

⁴⁴ *Govt of KPK Welfare Board vs. Raheel Ali Gohar & Others* reported as 2020 SCMR 2068.

⁴⁵ *Khushal Khan Khattak University & Others vs. Jabran Ali Khan & Others* reported as 2021 SCMR 977.

⁴⁶ Per *Muhammad Ali Mazhar J* in *Govt of KP vs. Sher Aman & Others* reported as 2022 SCMR 406.

⁴⁷ Per *Syed Mansoor Ali Shah J* in *Vice Chancellor Agriculture University Peshawar & Others vs. Muhammad Shafiq & Others (Civil Petition 2270 of 2019)* and connected matters; yet unreported judgment dated 17.01.2024.

⁴⁸ Reliance was placed upon *Faraz Ahmed vs. Federation of Pakistan* reported as 2022 PLC 198; *Government of Khyber Pakhtunkhwa vs. Sher Aman and others* reported as 2022 SCMR 406; *Vice Chancellor, Bacha Khan University Charsadda, Khyber Pakhtunkhwa vs. Tanveer Ahmad* reported as 2022 PLC (C.S.) 85; *Pakistan Telecommunication Company Ltd. vs. Muhammad Samiullah* reported as 2021 SCMR 998; *Messrs Sui Northern Gas Company Ltd. vs. Zeeshan Usmani* reported as 2021 SCMR 609; *Khushal Khan Khattak University vs. Jabran Ali Khan* reported as 2021 SCMR 977; *Pakistan Telecommunication Company Ltd. vs. Muhammad Samiullah* reported as 2021 SCMR 998; *Government of Khyber Pakhtunkhwa vs. Saeed-UI-Hassan* reported as 2021 SCMR 1376; *Muzaffar Khan vs. Government of Pakistan* reported as 2013 SCMR 304; *Government of Balochistan, Department of Health vs. Dr. Zahid Kakar* reported as 2005 SCMR 642.

24. The Supreme Court has categorically maintained that there is no generic entitlement⁴⁹ to regularization and such a claim could not be artificially resurrected by unmerited resort to Article 25 of the Constitution. The relevant findings in *VC Agriculture University* are reproduced herein below:

“It is well settled that there is no vested right to seek regularization for employees hired on contractual basis unless there is any legal or statutory basis for the same.⁵⁰ The process of regularization requires backing of any law, rules or policy⁵¹. It should adhere to the relevant statutory provisions and government policies⁵². In the absence of any of the same, a contractual employee cannot claim regularization. Applying the principles settled by this Court to the proposition at hand, it becomes clear that the Respondents have no automatic right to be regularized unless the same has specifically been provided for in law or policy which in the present case is not available. Any regularization without the backing of law offends the principles of fairness, transparency and meritocracy and that too at the expense of public exchequer. The Impugned Judgment has also erred in law by failing to take into account that where a contractual employee wishes to be regularized, he must demonstrate statutory basis for such a claim, in the absence of which, relief cannot be granted solely on the principle of “similarly placed persons⁵³.” Article 25 of the Constitution has no application to a claim based upon other unlawful acts and illegalities. It comes into operation when some persons are granted a benefit in accordance with law but others, similarly

⁴⁹ Per *Mansoor Ali Shah J* in *Province of Punjab vs. Dr. Javed Iqbal* reported as 2021 SCMR 767; *Govt of KPK vs. Jawad Ali & Others* reported as 2021 SCMR 185; *Owais Shams Durrani vs. Vice Chancellor Bacha Khan University* reported as 2020 SCMR 2041; Per *Miangul Hassan Aurangzeb J* in *First Womens Bank vs. Muhammad Tayyab* reported as 2020 PLC (C.S.) 86.

⁵⁰ *Faraz Ahmed vs. Federation of Pakistan* reported as 2022 PLC 198; *Government of Khyber Pakhtunkhwa vs. Sher Aman and others* reported as 2022 SCMR 406; *Vice Chancellor, Bacha Khan University Charsadda, Khyber Pakhtunkhwa vs. Tanveer Ahmad* reported as 2022 PLC (C.S.) 85; *Pakistan Telecommunication Company Ltd. vs. Muhammad Samiullah* reported as 2021 SCMR 998; *Messrs Sui Northern Gas Company Ltd. vs. Zeeshan Usmani* reported as 2021 SCMR 609; *Khushal Khan Khattak University vs. Jabran Ali Khan* reported as 2021 SCMR 977; *Pakistan Telecommunication Company Ltd. vs. Muhammad Samiullah* reported as 2021 SCMR 998; *Government of Khyber Pakhtunkhwa vs. Saeed-Ul-Hassan* reported as 2021 SCMR 1376; *Muzaffar Khan vs. Government of Pakistan* reported as 2013 SCMR 304; *Government of Balochistan, Department of Health vs. Dr. Zahid Kakar* reported as 2005 SCMR 642.

⁵¹ *Government of Khyber Pakhtunkhwa v. Sher Aman and others* (2022 SCMR 406); *Government of Khyber Pakhtunkhwa, Workers Welfare Board v. Raheel Ali Gohar* (2020 SCMR 2068).

⁵² *Government of Khyber Pakhtunkhwa vs. Intizar Ali* reported as 2022 SCMR 472; *Pir Imran Sajid vs. Managing Director Telephone Industries of Pakistan* reported as 2015 SCMR 1257.

⁵³ *Deputy Director Finance and Administration FATA vs. Dr. Lal Marjan* reported as 2022 SCMR 566.

placed and in similar circumstances, are denied that benefit. But where a person gains, or is granted, a benefit illegally, other persons cannot plead, nor can the court accept such a plea, that the same benefit must be allowed to them also in violation of law⁵⁴. Thus, the ground of discrimination also does not stand, because in order to establish discrimination it is important to show that the earlier act was based on law and policy, which has not been the case here. Thus, with respect to the first question raised, we are of the view that the regularization of the Respondents cannot take place without the backing of any law, rule or policy and without an open and transparent process based on an objective criteria, as discussed above.”

Public policy

25. The Supreme Court⁵⁵ went further to expound that the process of regularization is a policy matter and the prerogative of the executive, which ought not to be interfered by the Courts ordinarily⁵⁶. The edict observed that it does not behoove the Courts to design / formulate policy and that their role in such regard may be to judicial review policy, if such exists. The wisdom behind this concept of non-intervention is rested upon the concept of institutional autonomy, imperative for efficient determination of *inter alia* policy, planning, financial and staff management, and compensation. The Supreme Court went on to hold that intrusion of the Courts in such a policy domain was discouraged as the Courts were neither equipped with such expertise nor did they possess the relevant experience. Transgression, in such matters, was observed to amount to usurpation of power, militating against the spirit of Article 7 of the Constitution.

Unmerited reliance on authority

26. Petitioners’ learned counsel had pivoted their case on a leave refusal order in *Bakht Siddique*⁵⁷ to compel this Court to assume / exercise jurisdiction.

⁵⁴ *Muhammad Yasin vs. D.G. Pakistan, Post Office* reported as 2023 SCMR 394.

⁵⁵ In *VC Agriculture University* – paragraph 7 thereof.

⁵⁶ *Waqas Aslam vs. Lahore Electric Supply Company Limited* reported as 2023 SCMR 549; *Province of Punjab through Chief Secretary, Lahore vs. Prof. Dr. Javed Iqbal* reported as 2022 SCMR 897.

⁵⁷ *State Oil Company Limited vs. Bakht Siddique & Others* reported as 2018 SCMR 1181.

Mr. Ghazi Khan Khalil submitted that notwithstanding the non-binding effect of a leave refusal order⁵⁸, the pronouncement was entirely distinguishable in the present facts and circumstances. It was pointed out that the order itself stated that there was no dispute as to facts seized thereof before, however, clearly the same was not the case herein. It was also articulated that the relief sought therein was implementation of a Federal Government directive in a non-discriminatory manner; again not the case herein. Attention was drawn to the contents of the memorandum of petition⁵⁹ filed before the High Court to demonstrate that the case before the High Court was that of discrimination, in so far as entitlement per an office memorandum of 2008⁶⁰ was concerned. The two page order allowing the petitions⁶¹ specifically mentions that the petitioners sought implementation of this 2008 OM, within time, and rested its finding on the premise that equal treatment ought to have been given to all similarly placed persons. Mr. Khalil articulated that SSGC and similarly placed enterprises stood expressly excluded from the purview of the policy⁶², which in itself did not stand to scrutiny before the Courts, and the same stood superseded by an office memorandum of 2017⁶³. It was articulated that even though the petitioners have pleaded no entitlement per the respective OMs⁶⁴, however, even if they did their petitions would be barred by *laches*. Mr. Khalil eloquently summated the petitioners' case as being predicated on neither office memorandum but as a standalone claim, therefore, clearly inadmissible per the ratio of *Saeed Khoso*⁶⁵.

27. The petitioners had also sought refuge in the dicta of the *FFC case*⁶⁶, however, the same was also distinguished by Mr. Khalil *inter alia* on the grounds that the same was not a case where regularization was granted and in any event the Supreme Court was seized of the matter after it had been subjected to the statutory fora of adjudication; unlike the present case where the petitioners have approached this Court devoid of any plenary adjudication in the first instance, with no challenge represented to have been brought by any petitioner before the relevant fora. Mr. Qazi Umair Ali ventured further to demonstrate from the record that even if the control test, contemplated in the *FFC case*, was applied, the petitions would not survive the anvil as matters

⁵⁸ Per *Munib Akhtar J* in *CIR vs. Secretary Revenue Division* reported as 2021 PTD 11.

⁵⁹ CP D 3199 of 2013 – paragraphs 8 and 9 thereof.

⁶⁰ Office Memorandum issued by Government of Pakistan dated 29.08.2008 (“2008 OM”).

⁶¹ Dated 11.01.2013.

⁶² Reference is made *inter alia* to amending office memoranda dated 04.03.2019 issued by the Government of Pakistan Cabinet Secretariat Establishment Division.

⁶³ Office Memorandum issued by Government of Pakistan dated 11.05.2017 (“2017 OM”).

⁶⁴ As manifest from perusal of the memorandum of petition of the lead petition; relied upon by all counsel as being representative of the remaining memoranda.

⁶⁵ *Southern Gas Company Limited vs. Saeed Ahmed Khoso* reported as 2022 SCMR 1256.

⁶⁶ Per *Iftikhar Muhammad Chaudhry J* in *Fauji Fertilizer Company Limited vs. NIRC* reported as 2013 SCMR 1253.

pertaining to group policy, EOBI contributions, rotational policy, advance salary requests, leave, disciplinary proceedings, dismissal and retirement remained squarely within the domain of third party entities, hence, devoid of any nexus with SSGC.

28. It may be opportune to mention that the petitioners' learned counsel made no effort to rebut the arguments distinguishing the applicability of *Bakht Siddique* and the *FFC case* and this Court has been assisted with no reason to disagree with the respondents' learned counsel. Be that as it may, a Division Bench of this Court considered the import of *Bakht Siddique* in *Muhammad Umair*⁶⁷, interestingly in a case pertaining to Pakistan State Oil as was the case in *Bakht Siddique* itself, and distinguished it as follows:

“The petitioners' counsel had sought to rely on a leave refusal order in *Bakht Siddique*⁶⁸ to compel this Court to assume / exercise jurisdiction. On the other hand the respondents' counsel had cited a judgment of a five member bench of the august Court in *Farid Ahmed*⁶⁹, wherein the mutually exclusive distinction between the very respondent company's employees and those of third parties was conclusively upheld. Similar matters came up before this bench last month in *Muhammad Arif*⁷⁰, wherein in view of the binding precedent of recent edicts of the august Court in *Saeed Khoso*⁷¹, *PEPCO*⁷² and *Zeeshan Usmani*⁷³, it was maintained that a writ seeking regularization of service could not be maintained *inter alia* in respect of a company devoid of statutory rules.”

It is also imperative to denote that *Muhammad Umair* had also disapproved of invocation of writ jurisdiction merely on the premise that the Government owned some of the shareholding in the public limited company.

29. The judgment in *Muhammad Umair* was assailed before the Supreme Court in *Muhammad Arshad*⁷⁴ and *Muhammad Ali Mazhar J*, speaking for the Court, held that “... we have heard the learned counsel for the petitioners and

⁶⁷ *Muhammad Umair & Others vs. Federation of Pakistan & Others* (CP D 5333 of 2018) and connected matters; judgment dated 22.09.2022.

⁶⁸ *State Oil Company Limited vs. Bakht Siddique & Others* reported as 2018 SCMR 1181.

⁶⁹ Per *Aslam Riaz Hussain J* in *Farid Ahmed vs. Pakistan Burmah Shell Limited & Others* reported as 1987 SCMR 1463.

⁷⁰ Per *Muhammad Junaid Ghaffar J* in *Muhammad Arif vs. Federation of Pakistan* (CP D 875 of 2020) and connected petitions; yet unreported order dated 26.08.2022.

⁷¹ *Southern Gas Company Limited vs. Saeed Ahmed Khoso* reported as 2022 SCMR 1256.

⁷² *Pakistan Electric Power Company vs. Syed Salahuddin* reported as 2022 SCMR 991.

⁷³ Per *Sayyed Mazaher Ali Akbar Naqvi J* in *Sui Southern Gas Company Limited vs. Zeeshan Usmani* reported as 2021 SCMR 609.

⁷⁴ Per *Muhammad Ali Mazhar J* in *Muhammad Arshad & Others vs. Federation of Pakistan & Others* (Civil Petition 1323-K of 2022) and connected matters; judgment dated 19.04.2023.

also gone through the impugned orders/judgment but find no perversity or illegality, factual or legal in the impugned judgment". As a consequence the civil petitions for leave to appeal were dismissed with a poignant finding that *"the petitioners may, if so advised, approach an appropriate forum in accordance with law"*.

Strike down the enterprise of outsourcing

30. There was a rather trivial argument on behalf of the petitioners⁷⁵, albeit in rebuttal, to insist that this Court ought to strike down the entire enterprise of outsourcing as being contrary to the fundamental rights granted in the Constitution. Such a plea is alien to the pleadings⁷⁶ and no provision of any specific law has been assailed.

31. Provision of service is an integral constituent of the economy and finds specific mention in the Constitution *inter alia* in the context of taxation. Outsourcing of functions takes place between entities; not even restricted by national boundaries. This Court is constrained to observe that this unfounded challenge to the very enterprise of outsourcing does not augur any benefit to the petitioners' case and in any case this Court has not been assisted with any authority whereby such an exercise may be undertaken *suo motu*⁷⁷.

32. It is, therefore, safe to conclude, rested on the binding precedent referred to supra, that the present petitions do not survive on the anvil of maintainability.

Matter of entitlement

33. Ideally, since jurisdiction has been declined on the touchstone of maintainability, this deliberation may have ended here. However, the Supreme Court, in the SSGC case, has specifically invited this bench to express its view on the issue of entitlement of the claimants.

⁷⁵ Articulated by Mr. Ravi Pinjani, Advocate.

⁷⁶ As manifest from perusal of the memorandum of petition of the lead petition; relied upon by all counsel as being representative of the remaining memoranda.

⁷⁷ Per *Muhammad Ali Mazhar J* in *Abdullah Jumani vs. Province of Sindh (Civil Appeal 26-K of 2021)* and connected matters – yet unreported judgment dated 29.12.2023. Reliance was placed on *2014 SCMR 122*, *2018 SCMR 414*, *2000 SCMR 1046*, *PLD 2020 Supreme Court 282*, *PLD 2021 Supreme Court 571* and *PLD 2023 Supreme Court 236*.

34. The law pertaining to entitlement of regularization has been succinctly ensconced in a paragraph in *VC Agriculture University*⁷⁸ and it has been maintained that the right to seek regularization, for contractual employees, has to be rested on a statutory or legal basis. *Sher Aman*⁷⁹ had earlier catalogued the contemporary law pertaining to regularization and also held that regularization requires the backing of law, rules or policy and in the absence thereof no claim in such regard ought to be entertained.

35. It may be pertinent to observe that the petitioners' counsel made no endeavor to identify any statute, rule etc. in pursuance whereof the claim for regularization could be considered.

36. In so far as policy is concerned, *Athar Minallah J* meticulously catalogued the genesis and evolution of Federal Government policies in regard hereof; in paragraph 2 of *Shagufta Hashmat*⁸⁰. Reliance upon the 2008 OM⁸¹ and 2017 OM⁸² could not be demonstrated from the pleadings, however, such reliance was argued by Mr. Ghazi Khan Khalil to be unfounded as *inter alia* the relevant policy expressly excluded applicability to the present facts and circumstances⁸³; the 2008 OM did not survive scrutiny the Courts⁸⁴; the petitioners *admittedly* never applied to the concerned fora per the relevant memoranda at the relevant time or at any time since; the 2017 OM in any event provided for a few extra marks in a competitive test / prospect of age relaxation and has no bearing herein; and finally that the same would be *prima facie* barred by *laches*.

37. There was an argument that the petitioners acquired vested rights per the 2008 OM, despite never having applied thereunder at the material time, and the right so vested crystallized as a past and closed transaction notwithstanding companies in the nature of SSGC having been excluded from the purview thereof or the said memorandum having been disapproved by the

⁷⁸ Per *Syed Mansoor Ali Shah J* in *Vice Chancellor Agriculture University Peshawar & Others vs. Muhammad Shafiq & Others (Civil Petition 2270 of 2019)* and connected matters; yet unreported judgment dated 17.01.2024 paragraph 6 thereof; as reproduced in paragraph 24 supra.

⁷⁹ Per *Muhammad Ali Mazhar J* in *Govt of KP vs. Sher Aman & Others* reported as 2022 SCMR 406.

⁸⁰ Per *Athar Minallah J* in *Shagufta Hashmat vs. Federation of Pakistan* reported as 2018 PLC CS 619.

⁸¹ Office Memorandum issued by Government of Pakistan dated 29.08.2008.

⁸² Office Memorandum issued by Government of Pakistan dated 11.05.2017.

⁸³ Reference is made *inter alia* to amending office memoranda dated 04.03.2019 issued by the Government of Pakistan Cabinet Secretariat Establishment Division.

⁸⁴ Per *Athar Minallah J* in *Shagufta Hashmat vs. Federation of Pakistan* reported as 2018 PLC CS 619; Per *Aamer Farooq J* in *Major Waqar Ali Shah vs. Nawab Ali* reported as 2015 PLC CS 1137.

Courts. There is ample authority on the issue of vested rights⁸⁵, however, the seminal judgment demarcating the remit of rights, vested rights and past & closed transactions is *Shahnawaz*⁸⁶; authored by *Munib Akhtar J.* No attempt was made to qualify the petitioners' averment upon the anvil so demarcated.

38. The argument that a right to regularization crystallizes by mere efflux of time has not found favor with the Supreme Court⁸⁷. The counsel also refrained from assisting this Court as to how any discussion in the Parliament, or committee thereof, could have any bearing to substantiate entitlement in this context, *inter alia* in view of Articles 66 and 69 of the Constitution. Notwithstanding the foregoing, it is observed from the report of the Special Committee on Affected Employees of the National Assembly of Pakistan, item number / paragraph 45 (e) pertaining to a meeting dated 31.05.2023, that no decision was taken in such regard and on the contrary the agenda item was *specifically* deferred, pending decision of the Court.

39. The petitioners also averred that verbal directions⁸⁸ were given by *this Court* to SSGC to formulate policy for regularization of the petitioners. Even though the order sheet of the said date does not contain an express direction and the averred course did not meet fruition⁸⁹, however, it is respectfully observed that such effort, if any, would militate against the findings in *VC Agriculture University*⁹⁰ where the Supreme Court has explicitly maintained that regularization was a policy matter, not ordinarily amenable to intrusion by the Courts.

⁸⁵ *Nagina Silk Mills vs. ITO* reported as *PLD 1963 SC 322*; *East Pakistan vs. Sharafatullah* reported as *1970 PLD SC 514*; *CIT vs. EFU Insurance* reported as *1982 PLD SC 247*; *G H Shah vs. Chief Land Commissioner* reported as *1983 CLC 1585*; *Al Samrez Enterprises vs. Pakistan* reported as *1986 SCMR 1917*; *WAPDA vs. Capt. Nazir* reported as *1986 SCMR 96*; *Chief Land Commissioner vs. G H Shah* reported as *1988 SCMR 715*; *Molasses Trading & Export vs. Pakistan* reported as *1993 SCMR 1905*; *Muhammad Hussain vs. Muhammad* reported as *2000 SCMR 367*; *Shahnawaz vs. Pakistan* reported as *2011 PTD 1558*; *Zila Council Jhelum vs. PTC* reported as *PLD 2016 SC 398*; *Al Tech Engineers vs. Pakistan* reported as *2017 SCMR 673*; *Super Engineering vs. CIR* reported as *2019 SCMR 1111*; *H M Extraction vs. FBR* reported as *2019 SCMR 1081*.

⁸⁶ Per *Munib Akhtar J* in *Shahnawaz vs. Pakistan* reported as *2011 PTD 1558* ("*Shahnawaz*").

⁸⁷ *Owais Shams Durrani vs. Vice Chancellor Bacha Khan University* reported as *2020 SCMR 2041*.

⁸⁸ Communique of SSGC counsel to SSGC dated 24.03.2021 placed on record along with Statement on behalf of the respondent no 2 dated 02.10.2023.

⁸⁹ As demonstrated from Communique of SSGC counsel to SSGC dated 28.04.2021 and paragraph 5 of the SSGC noting sheet dated 28.04.2021 placed on record along with Statement on behalf of the respondent no 2 dated 02.10.2023.

⁹⁰ Per *Syed Mansoor Ali Shah J* in *Vice Chancellor Agriculture University Peshawar & Others vs. Muhammad Shafiq & Others (Civil Petition 2270 of 2019)* and connected matters; yet unreported judgment dated 17.01.2024.

40. The petitioners have already been non-suited by this Court on account of maintainability, however, per the SSGC case⁹¹, whereby the matter was remanded by the Supreme Court, this Court was also invited to express its view on the issue of entitlement. The respective arguments have been faithfully noted supra, however, since the separate pleas of each of the three thousand three hundred and fifty nine claimants have not been individually appraised and jurisdiction has been declined, therefore, rendering findings in respect of individual entitlement is not merited. As observed by the Supreme Court in *Muhammad Arshad*⁹², “the petitioners may, if so advised, approach an appropriate forum in accordance with law”.

Conclusion

41. This Court is bound by the authority illumined by the Supreme Court, as noted supra, therefore, in application of the enunciation of the principles of law enshrined therein, these petitions are found to be misconceived on the touchstone of maintainability, hence, dismissed.

The office is instructed to place a copy hereof in each of the connected petitions.

Judge

While I agree with my learned brother, Agha Faisal J, that the petitions are to be dismissed, I have written an additional note on the matter.

Judge

For separate reasons that follow, I agree with the dismissal.

Judge

⁹¹ *SSGCL vs. Toto & Others* and connected matters (*Civil Petition 6164 of 2021* and connected petitions); order dated 01.12.2022 (“SSGC case”).

⁹² Per *Muhammad Ali Mazhar J* in *Muhammad Arshad & Others vs. Federation of Pakistan & Others* (*Civil Petition 1323-K of 2022*) and connected matters; judgment dated 19.04.2023.

Schedule

CP D 5332 of 2018 - Fahad Arshad & Ors v. Fed. of Pakistan & Others	CP D 6047 of 2018 - Asif Mehmood & Ors v. Fed. of Pakistan & Others
CP D 6676 of 2018 - Attaullah Sirohi & Ors v. G.M Human Resources SSGC & Others	CP D 8200 of 2019 - Muhammad Sumair Gul v. Fed. of Pakistan & Others
CP D 1087 of 2020 - Muhammad Qaiser Alam and Others v. Fed. of Pakistan & Others	CP D 1253 of 2020 - Sadam Hussain & Ors v. Fed. of Pakistan & Others
CP D 1355 of 2020 - Syed Yasir Shabbir & Others v. Fed. of Pakistan & Others	CP D 1441 of 2020 - Rashid Azeem & Others v. Fed. of Pakistan & Others
CP D 1573 of 2020 - Usama Mir & Others v. Fed. of Pakistan & Others	CP D 1863 of 2020 - Muhammad Bashir & Others v. Fed. of Pakistan & Others
CP D 1923 of 2020 - Rao Muhammad kamran & Others v. Fed. of Pakistan & Others	CP D 3428 of 2020 - Hakim Ali Khokhar and Others v. Fed. of Pakistan & Others
CP D 3429 of 2020 - Allah Wasayo & Others v. Fed. of Pakistan & Others	CP D 4015 of 2020 - Asif Soomro v. Fed. of Pakistan & Others
CP 4361 of 2020 - Syed Samar Abbas v. Fed. of Pakistan & Others	CP D 4431 of 2020 - Ashraf Ali Khan & Other v. Fed. of Pakistan & Others
CP D 4577 of 2020 - Syed Muhammasd Younus & Others v. Fed. of Pakistan & Others	CP D 5027 of 2020 - Mushk Mona Ayaz v. Fed. of Pakistan & Others
CP D 5073 of 2020 - Sartaj Ahmed & Others v. Fed. of Pakistan & Others	CP D 5273 of 2020 - Asia Kausar Ali v. Fed. of Pakistan & Others
CP D 5420 of 2020 - Wahid Bux Bhutto and Others v. Fed. of Pakistan & Others	CP D 5999 of 2020 - Muhammad Arif and Others v. Fed. of Pakistan & Others
CP D 6182 of 2020 - Ahsan Nisar Siddiqui v. Fed. of Pakistan & Others	CP D 6378 of 2020 - Muhammad Zafar & Others v. Fed. of Pakistan & Others
CP D 645 of 2020 - Imran & Others v. Fed. of Pakistan & Others	CP D 6526 of 2020 - Aftab Mahmood & Others V. Fed. of Pakistan & Others
CP D 1366 of 2021 - Naeem Faisal Saleem & Others v. Fed. of Pakistan & Others	CP D1604 of 2021 - Qayyum & Others v. Fed. of Pakistan & Others
CP D 1892 of 2021 - Muhammad Akhtar & Others v. Fed. of Pakistan & Others	CP D 317 of 2021 - Iftikhar Ahmed & Others v. Fed. of Pakistan & Others
CP D 3541 of 2021 - Ali Sher and Others v. Fed. of Pakistan & Others	CP D 3943 of 2021 - Saddam Hussain & Others v. Fed. of Pakistan & Others
CP D 4340 of 2021 - Ayub Khan & Others v. Province of Sindh & Others	CP D 1962 of 2023 - Sultan Ahmed & Others v. Fed. of Pakistan & Others
CP D 2051 of 2022 - Naseem Ali & Others v. Fed. of Pakistan & Others	CP D 1964 of 2023 - Tulsidas Lohana and Others v. Fed. of Pakistan & Others
CP D 1963 of 2023 - Zubair Ali & Others v. Fed. of Pakistan & Others	CP D 1966 of 2023 - Mujeeb ur Rehman & Others v. Fed. of Pakistan & Others
CP D 1965 of 2023 - Muhammad Usman & Others v. Fed. of Pakistan & Others	CP D 1968 of 2023 - Khuda Bux @ Chandi Khan & Others v. Fed. of Pakistan & Others
CP D 1967 of 2023 - Fareed Ahmed v. Fed. of Pakistan & Others	CP D 1970 of 2023 - Farrukh Zia & Others v. Fed. of Pakistan & Others
CP D 1969 of 2023 - Toto & Others v. Fed. of Pakistan & Others	CP D 1972 of 2023 - Aqeel Ahmed & Others v. Fed. of Pakistan & Others
CP D 1971 of 2023 - Qamar Ali Leghari & Others v. Fed. of Pakistan & Others	CP D 2848 of 2023 - Babar Ali & Others v. Fed. of Pakistan & Others
CP D 1973 of 2023 - Ghulam Murtaza & Others v. Fed. of Pakistan & Others	

YOUSUF ALI SAYEED, J - This Larger Bench was constituted in view of an Order made by the Supreme Court while seized of the conflicting Judgments arising out of CP. No. D-405 of 2019 and connected matters on the one hand and C.P. No. D-875/20 and connected matters on the other, where divergent views had been taken by learned Division Benches of this Court as to the maintainability of petitions brought against the Sui Southern Gas Company Limited (the “SSGC”) under Article 199 of the Constitution by persons under contractual employment seeking regularization of their service. Both the impugned Judgments were set aside, with these matters being returned for determination of the question of maintainability, as well as that of entitlement.

2. Having had the benefit and pleasure of reading the detailed Judgment authored in the matter by my learned brother, Agha Faisal, J, it is pertinent to observe that the antecedents of the respective Petitioners, the nature and scope of the controversy as well as the submissions advanced by learned counsel appearing in the matter have already been recorded with considerable exactitude therein, hence require no further elucidation. However, while being in concurrence with the finding that the Petitions are to be dismissed, a slight variance in thought requires some elucidation.
3. That the SSGC is amenable to the issuance of a writ under Article 199 of the Constitution on the touchstone of the function test elaborated in *Salahuddin v. Frontier Sugar Mills & Distillery Ltd* PLD 1975 SC 244 is not in doubt in view of the judgment of the Supreme Court in the case reported as *Hadayat Ullah and others v. Federation of Pakistan and others* 2022 SCMR 1691, where the same was applied to various organisations, including the SSGC, with reference to their functions as well attachment to Ministries/Divisions in the Federal domain and the control exercised by the Federal Government by virtue of its majority shareholding.
4. However, the question remains as to whether a person under contractual employment with a corporation, such as SSGC, can

maintain a Petition under Article 199 of the Constitution so as to claim the regularization of his or her employment through issuance of a writ mandating that he or she be accorded the status of permanent employee, and, if so, whether the Petitioners before us have made out a case as to their entitlement in that regard?

5. As the subject of regularization is not a part of the terms and conditions of service *per se*, the question of maintainability of such a claim does not turn on whether the service rules of the corporation are statutory or non-statutory so much as whether any statute or other instrument having the force of law confers such a right so as to admit to its enforcement through a Petition under Article 199. That much stands well settled in terms of the judgments of the Supreme Court in the cases reported as Government of Khyber Pakhtunkhwa, Workers Welfare Board through Chairman v. Raheel Ali Gohar and others 2020 SCMR 2068, Messrs Suit Southern Gas Company ltd v. Zeeshan Usmani and others 2021 SCMR 609, Khushal Khan Khattak University & others v. Jabran Ali Khan & others 2021 SCMR 977, Vice-Chancellor, Bacha Khan University Charsadda, Khyber Pakhtunkhwa and others v. Tanveer Ahmed and others 2022 PLC (C.S.) 85, Faraz Ahmed v. Federation of Pakistan through Secretary, Ministry of Communication, Government of Pakistan, Islamabad and others 2022 PLC 198, Deputy Director Finance and Administration FATA through Additional Chief Secretary FATA, Peshawar and others v. Dr. Lal Marjan 2022 SCMR 566, as well as the as yet unreported Judgment rendered on 17.01.2024 in a bunch of petitions , with the lead matter being Civil Petition No. 2270/2019 titled Vice Chancellor Agriculture University Peshawar, etc. v. Muhammad Shafiq, etc.

6. The Petitioners have failed to make out case on that basis which, it must be said, is on a different pedestal from a claim that could otherwise be brought by a workman through a grievance petition before a relevant forum under the labour laws, seeking that the

continuation of his or her employment on a contractual basis be declared wrongful and that such employment be declared to be permanent.

7. Ergo, from the standpoint of Article 199, the subject of entitlement to regularization and the question of maintainability of a petition brought on such subject are intertwined. As it stands, in the absence of any statute or other instrument having the force of law requiring SSGC to regularize the service of the Petitioners, no entitlement arises so as to enable them to bring and maintain these Petitions under Article 199 of the Constitution, which stand dismissed accordingly.

JUDGE

Adnan Iqbal Chaudhry J. - I have gone through the eloquent judgment by my learned brother, Agha Faisal J. and agree that the petitions are liable to be dismissed, however I arrive at that conclusion for somewhat different reasons.

2. The Petitioners claim to be serving the Sui Southern Gas Company Ltd. [SSGC] as Sports Patrolmen, Inspectors, Customer Relations Officers, Civil Engineers, Electrical Engineers, Assistants, Dispatchers, Helpers, Clerks, Drivers, Executive Officers, Computer Operators, Help Desk Representatives, Record Keepers and IT Clerks. All of them are on contract, some directly with the SSGC, most through a third-party service provider. They pray for a writ to the SSGC to regularize their service *i.e.* to appoint them as regular employees.

3. Most of these petitions were remanded by the Honourable Supreme Court⁹³ for a decision afresh by a larger Bench of this Court on the point of maintainability and as to the Petitioners' entitlement to a writ for regularization. Thereafter, other similar petitions pending before this Court also came to be tagged with the remanded petitions. While remanding the petitions, the Supreme Court set-aside both sets of judgments impugned before it, *i.e.* the judgment in *Toto & others*⁹⁴ and the judgment in *Muhammad Arif & others*⁹⁵; the latter on the touchstone of *Multiline Associates*,⁹⁶ and the former for a decision afresh. Therefore, when neither of said judgments are in field, I do not see the point of discussing which view was correct, especially when neither view is binding on this larger Bench.

Facts of the petitions:

⁹³ Order dated 01-12-2022 passed in Civil Petition Nos. 6164 to 6170 of 2021 etc.

⁹⁴ *Toto & others v. Federation of Pakistan*, C.P. No.D-405/2019 and connected petitions *vide* judgment dated 20-10-2021.

⁹⁵ *Muhammad Arif v. Federation of Pakistan*, C.P. No.D-875/2020 and connected petitions *vide* judgment dated 26-08-2022.

⁹⁶ *Multiline Associates v. Ardeshir Cowasjee* (PLD 1995 SC 423).

4. C.P. No. D-1962 to C.P. No. D-1973 of 2023⁹⁷ are more or less identical. These Petitioners claim to be working on contract in various departments of the SSGC for 7 to 10 years or so. They plead that by efflux of time they become entitled to regular appointment as in *State Oil Company Ltd. v. Bakht Siddiqui* (2018 SCMR 1181), and judgments of this Court in *Muhammad Ali Shah v. Federation of Pakistan*, 2021 PLC (C.S.) 295, *Allana Mousa v. Federation of Pakistan*, C.P. No. D-5871/2014, the latter having been upheld by the Supreme Court in *SSGC v. Federation of Pakistan* (C.P. No. 1313 to 1317 of 2019 etc.) by order dated 07.01.2020. The Petitioners aver that from time to time the SSGC has been regularizing contract employees on political considerations leaving behind the Petitioners.

5. C.P. No. D-5332/2018, 3428/2020, 3429/2020, 4361/2020, 4577/2020, 5073/2020, 5420/2020, 5999/2020, 1604/2021, 1892/2021, 4340/2021, 2051/2022 and 2848/2023 are all similar. The Petitioners claim to be serving the SSGC on contract or daily wages for periods ranging between 3 to 15 years. They seek regularization on the ground equal treatment.

6. Though most of the aforesaid petitions consist of dozens even hundreds of Petitioners, the memos make no distinction between those who are on contract directly with the SSGC and those who are on contract with a third-party service provider. Few of the Petitioners have filed employment contracts or appointment letters. Most rely on internal memos, attendance sheets, job cards, employee cards, gate passes etc. to demonstrate employment. It is therefore difficult to discern which Petitioner falls in which category and what are the terms and conditions of employment. From the documents annexed to the petitions, as also the objections filed by the SSGC, it appears that most of the aforesaid Petitioners are through a third-party service provider. The SSGC has filed contracts to show that it has outsourced a number of works and services to such contractors such as security services, janitorial services,

⁹⁷ Renumbered after transfer from the Hyderabad Circuit to the Principal Seat at Karachi.

meter-reading, meter-removal and installation, gardening, engineering, medical, disconnection, bill printing, information technology, skilled and unskilled labour, call centre services, transport and gas-leak survey.

7. C.P. No.D-645, 875, 1087, 1355, 1441, 1863, 1923, 4015, 5027, 5273, 6182, 6526 of 2020 and 1366/2021 are all similar. These Petitioners claim to be working in various departments of the SSGC for a number of years on '*HR approved contracts*' or '*third party employment*' or on '*daily wages*', all engaged through a third-party service provider. In C.P. No. D-3541/2021 the Petitioners aver that they were initially receiving salary from the SSGC but latter such salary was routed through a contractor. The Petitioners submit that since they are performing functions of regular employees of SSGC, their employment through the third-party service provider is a sham, exploitive and discriminatory; that they are to be reckoned as employees of SSGC and are entitled to be regularized as such. These Petitioners too rely on the cases cited in para 4 above.

8. C.P. No. D-317/2021, 6047/2018 and 1253/2020 are similar to the petitions above, however these Petitioners additionally rely on an Office Memorandum dated 11-05-2017 issued by the Federal Government for regularization.

9. There are then the following Petitioners who claim to be on contract directly with the SSGC:

- (i) In C.P. No.D-6676/2018, the Petitioners seek regularization on the basis of press reports dated 07-01-2012 that the Federal Minister for Petroleum & Natural Resources had announced that contract employees would be regularized. But, as per the comments of the SSGC, the contracts of five out of these seven Petitioners were terminated back in 2016.
- (ii) In C.P. No.D-6378/2020 and C.P. No.D-3943/2021 the Petitioners were sportsmen in various sports teams of the SSGC. Thereafter they were retained as Executive Officers and Assistant Managers on contracts renewed from time to time.
- (iii) In C.P. No.D-1573/2020 and 4431/2020, the Petitioners were hired by the SSGC on annual contracts for its cricket team. Due to redundancy of departmental cricket, the contracts of some Petitioners were not renewed. These

Petitioners seek a writ against termination of service with a writ for regularization.

- (iv) The Petitioners of C.P. No.D-2848/2023 were appointed on contract for a certain project, whereas the Petitioners of C.P. No.D-6676/2018 were engaged on daily wages. Both seek regular appointment.
- (v) In C.P. No.D-8200/2019, the Petitioner is an Executive Officer on contract. Pursuant to judgment in an earlier petition, he was considered for regularization, but he failed the NTS test which was the criteria. In this second petition his grievance is that he could not be subjected to a fresh criteria for regularization.

10. The defence of the SSGC in all these petitions is similar *viz.* that it is within its right to outsource certain jobs and services to third-party service providers; that most of the Petitioners are employees of such third-parties and have no privity of contract with the SSGC; and that petitions under Article 199 of the Constitution are not maintainable given the relationship of master and servant. It is also contended that a number of Petitioners are strangers, i.e. they are neither on contract with the SSGC nor with any third-party providing service to SSGC, rather they have joined these petitions on the basis of forged and fabricated documents. It is also averred that some of the Petitioners have filed a second petition for the same relief, and that some of the Petitioners already stand terminated by expiry of contracts.

11. The third-party contractors, who are arrayed as respondents in some of the petitions, too state that the Petitioners who are serving the SSGC through them, are the employees of the third-party contractor who pays their salary, group insurance, EOBI contributions etc.

12. Submissions of learned counsel have already been summarized in the opinion of Agha Faisal J. and I do not repeat them here.

Opinion:

13. The Petitioners can be put in two categories. Category-A are those who have or had contracts of employment directly with the SSGC, time-bound and renewed from time to time. Category-B, which appear to be

the majority, are those who are or were serving the SSGC through a third-party who is under contract with SSGC to provide services or man-power. When Petitioners in category-A pray for regularization, they seek a direction to the SSGC to absorb them into regular service which provides for better job security and better emoluments as compared to contract employment simpliciter. However, when Petitioners in category-B pray for regularization, they would first have to establish that their contract with the third-party contractor is a sham and they are in essence employees of the SSGC.

14. The SSGC disputes that the Petitioners engaged through third-party contractors are employees of the SSGC. It also alleges that some of the Petitioners are neither on the pay-roll of the SSGC nor of any third-party service provider, but have joined these petitions with forged and fabricated documents; and that some Petitioners already stand terminated on expiry of contracts. As already narrated above, the petitions as drafted are completely inept to deal with these disputed questions of fact.

15. Learned counsel for the Petitioners placed reliance on *Fauji Fertilizer Company Ltd. v. National Industrial Relations Commission* (2013 SCMR 1253) where the Supreme Court upheld the finding that employees engaged through a third-party contractor were in fact employees of the company which had contracted the third-party. *Fauji Fertilizer* had however emanated from an industrial dispute and grievance petitions under the Industrial Relations Ordinance, 1969 [IRO] where the definition of 'worker' in section 2(xxviii) included a person "either directly or through a contractor".⁹⁸ There, the employer/company had contended that the locked-out workers were of the third-party contractor, which contention was rejected in separate proceedings by the Full Bench of the NIRC and the Labour Appellate Tribunal to hold that since the workers were working in the factory of the company and were involved in the manufacturing process, they were for all intents and purposes the workers of the company. After

⁹⁸ A similar definition carries into the Industrial Relations Act, 2012.

discussing the meaning of the words 'either directly or through a contractor', the Supreme Court laid down the following test to determine that relationship :

“Normally, the relationship of employer and employee does not exist between a company and the workers employed by the Contractor; however, in the case where an employer retains or assumes control over the means and method by which the work of a Contractor is to be done, it may be said that the relationship of employer and employee exists between him and the employees of the contractor. Further, an employee who is involved in the running of the affairs of the company; under the direct supervision and control of the company; working within the premises of the company, involved directly or indirectly in the manufacturing process, shall be deemed to be employees of the company.”

16. Therefore, firstly, the case of *Fauji Fertilizer* does not lay down the proposition that all workers engaged by a company through a contractor are automatically workers of the company. Rather, it was held that workers engaged through a contractor **not** for running the affairs of the company, remain the employees of the contractor. Secondly, there was a finding of fact by *fora* below that workers engaged through the contractor were involved in a core process of the company and hence were to be treated as workers of the company. None of the Petitioners before us who claim to be workmen have ever approached any forum for a determination of that status. Thirdly, learned counsel for the Petitioners did not assist us on the question whether the definition of 'worker' in the Industrial Relations Act, 2012 [IRA] could extend for considering regularization of service. Tentatively, it appears that the definition of 'worker' in the IRA to include 'either directly or through a contractor' is to afford workers the protection of labour laws and is not intended as a scheme of regularization of employment.

17. Be that as it may, even if we were to accept that employees in category-B, who are engaged through a contractor, are to be treated as employees in category-A who are contracted directly by the SSGC, both would nevertheless remain contract employees and are confronted with the maintainability of writ petitions.

Maintainability - Whether writ can issue:

18. The question to maintainability of the petitions is two-fold, *i.e.* whether the SSGC is amenable to writ jurisdiction, and if so, whether the Petitioners are even entitled to a writ for regularization.

19. Under Article 199(1)(a) of the Constitution a writ can issue to “a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority.” Per Article 199(5) of the Constitution, “person” includes any body politic or corporate, any authority of or under the control of the Federal Government or of a Provincial Government. It will be seen that Article 199(5) makes no distinction between a body corporate created by a statute by legal fiction and a body incorporated under the Companies Act. Even if it is the latter and is under the control of the Government⁹⁹ and performs functions in connection with the affairs of the Federation, a Province or a local authority, it will open to a writ.

20. To determine whether a company is amenable to the writ jurisdiction, the Courts have evolved what is known as the ‘function test’, explained in the oft cited *Salahuddin v. Frontier Sugar Mills and Distillery Ltd.* (PLD 1975 SC 244), and then reiterated by a five-member Bench of the Supreme Court in *Pakistan Defence Officers Housing Authority v. Lt. Col. Jawaid Ahmed* (2013 SCMR 1707) as follows:

“While dilating on this question whether the appellants’ organizations are ‘persons’ within the meanings of Article 199(1)(a)(ii) read with Article 199(5) of the Constitution, the expanded functions of the Federation or a Province in contemporary age have to be kept in view. An important dimension of the modern welfare State is that the role of the State and its various institutions has increased manifold. The government is regulator and dispenser of special services. It has the power to create jobs, issue licenses, fix quotas, grant mining rights or lease of estate, sign contracts and provide variety of utility services to the people. Such entrepreneurial activities at times are carried out through companies created under the Statute or under the Companies Ordinance. The functions these companies/institutions perform have elements of public authority. A public authority is a body which has

⁹⁹ A company under the control of the Government is also classified in the Companies Act, 2017 as a ‘public-sector company’ and defined in section 2(54).

public or statutory duties to perform and which performs those duties and carries out its transactions for the benefit of the public and not for private gain or profit. Such an authority, however is not precluded from making a profit for the public benefit. The Courts have generally applied what has been classified as a 'function test' to consider whether a statutory body is a 'person' within the meaning of Article 199 of the Constitution."

Applying the function test, the superior Courts have time and again issued writs to companies incorporated under the Companies Ordinance as in *Muhammad Dawood v. Federation of Pakistan*, 2007 PLC (C.S.) 1046, *Pir Imran Sajid v. Managing Director, Telephone Industries of Pakistan* (2015 SCMR 1257) and *PTCL v. Masood Ahmed Bhatti* (2016 SCMR 1362).

21. Though the SSGC is a public company incorporated under the Companies Act, majority of its shares are held directly or indirectly by the Government of Pakistan. It is a 'public sector company' as defined in section 2(54) of the Companies Act, 2017 whose Board is regulated and evaluated by the Federal Government under the Public Sector Companies (Corporate Governance) Rules, 2013. It has a virtual monopoly over the transmission, distribution and sale of the essential resource of natural gas throughout the Provinces of Sindh and Balochistan. It's revenue requirement determines the tariff of natural gas payable by public consumers. Therefore, on the function test, the SSGC would be a 'person' within the meaning of Article 199 of the Constitution and amenable to the writ jurisdiction. To cite *Khawaja Muhammad Asif v. Federation of Pakistan* (PLD 2014 SC 206):

"Natural gas and LPG extracted therefrom are precious mineral resources vesting in the State and ultimately in the People. SSGCL is a State enterprise in which the majority shareholding is held by the Government. SSGCL is therefore, not free to deal with such assets whimsically or in utter disregard of the fiduciary duty owed to the nation. Nor, we may add, does SSGCL have unfettered discretion to deal with national assets in a manner that does not protect and advance the best interests of SSGCL as a fiduciary and repository of the interest of the people of Pakistan who are, through the Government, beneficial owners, not only of the mineral resources of the country but also of a majority interest in SSGCL."

22. That being said, even if a writ can issue to the SSGC, it can issue under Article 199(1)(a)(i) only to do a thing 'required by law to do'. It is

in this context of what the 'law' requires to be done, that the test of statutory rules came about in cases where the employee was on contract and not a civil servant. For service matters it has since been settled by a five-member Bench of the Supreme Court in *Defence Officers Housing Authority v. Lt. Col. Jawaid Ahmed* that even if the employer is a statutory body, "Where conditions of service of employees of a statutory body are not regulated by Rules/Regulations framed under the Statute but only Rules or Instructions issued for its internal use, any violation thereof cannot normally be enforced through writ jurisdiction and they would be governed by the principle of 'Master and Servant'."¹⁰⁰ The underlying jurisprudence is discussed in the cases of *Anwar Hussain v. Agricultural Development Bank of Pakistan* (PLD 1984 SC 194), *Principal, Cadet College, Kohat v. Muhammad Shoab Qureshi* (PLD 1984 SC 170), and *Karachi Development Authority v. Wali Ahmed Khan* (1991 SCMR 2435) as follows. The relationship between the employer and employee of a statutory corporation is ordinarily the result of a contract freely entered by the parties which evokes the principle of master and servant. However, if some law or statutory rule intervenes and places fetters upon the freedom of the parties in the matter of terms of the contract, that is an exception to the principle of master and servant, because the pleasure of the master is then taken over by the statutory provision/law and a violation thereof can be redressed by invoking constitutional jurisdiction. Conversely, where the terms and conditions of employment are not governed by statutory rules but only by regulations, instructions or directions intended for internal use, the violation thereof cannot be normally enforced through a writ petition.

Maintainability - Entitlement to regularization:

23. As the SSGC is not governed by statutory rules of service, learned counsel for the Petitioners accepted that a writ cannot issue to enforce such service rules or contracts. However, they make a point in submitting that the Petitioners do not seek enforcement of service contracts or rules, rather they seek enforcement of the 'law' that entitles

¹⁰⁰100 Para 50(ii) of the judgment.

them to regularization in service, which is not the same as enforcing non-statutory service rules, and for which the writ jurisdiction can be invoked. But then, as to what that 'law' is, some counsel submit that to be the fundamental right of livelihood enshrined in Article 9 of the Constitution by reason of long standing service; some submit that it is the fundamental right to similar treatment under Article 25 of the Constitution as similar relief has already been granted by the Courts to others; and some submit that it is the regularization policy of the Federal Government *vide* Office Memorandum dated 11-05-2017.

24. Office Memorandum [OM] dated 11-05-2017 was the decision of the Federal Cabinet to amend OM dated 16-01-2015 which was its recruitment policy at the time. The amendment introduced a one-time criteria for regularizing contract and temporary employees in departments, authorities, corporations and companies of the Federal Government who had rendered a minimum of one year of service in continuity as on 1-1-2017, and for daily wagers who had completed at least 365 days. Per the Petitioners, such regularization policy was also applicable to the SSGC. However, as pointed out by learned counsel for the SSGC, it was held by the Islamabad High Court in *Shagufta Hashmat v. Federation of Pakistan*, 2018 PLC (C.S.) 619 and *Imran Ahmed v. Federation of Pakistan*, 2019 PLC (C.S.) Note 19, that OM dated 11-05-2017 was not binding on a statutory authority or a company under the Companies Act as the respective Boards of such bodies were competent to frame their own regularization policy. In compliance, the Federal Government issued OM dated 04-03-2019 which stipulated that:

*"The recruitment mechanism issued by this Division vide OM dated 16-01-2015 shall not be applicable on:
Autonomous Bodies / Semi-Autonomous Bodies / Corporations / Companies / Authorities which have been created by a statute and respective boards thereof are competent to frame own service regulations."*

25. Therefore, the regularization policy which was OM dated 11-05-2017, was withdrawn for companies of the Federal Government when OM dated 04-03-2019 declared that the entire recruitment policy in OM dated 16-01-2015 was not applicable to such companies. In short, OM dated 11-05-2017 is not applicable to the SSGC and not available to

the Petitioners as a ground for regularization. In any case, the regularization that was contemplated by OM dated 11-05-2017 was not automatic, but had to follow a criteria and process, and none of the Petitioners demonstrate that they had applied or qualified thereunder. It is axiomatic that a regularization policy cannot be implemented *en masse* without examining the case of each petitioner on the merits, nor can it be construed or implemented in a manner which might extend legitimacy to illegally appointed employees.¹⁰¹

26. It is settled law that for a writ to issue under Article 199(1)(a) of the Constitution the petitioner has to establish that he is guaranteed a fundamental or legal right, as the object of the Article is the enforcement of a legal right and not the establishment of a legal right.¹⁰² The precedents binding us categorically hold that in the absence of a specific provision in the contract, or a law providing for regularization, contract employees do not have a vested right for regular appointment solely for long and satisfactory contractual service; and that, while exercising jurisdiction under Article 199 of the Constitution the High Court cannot extend the scope of a contract or alter the terms and conditions of employment in favour of the employee. These are pronouncements of the Supreme Court in *Muzaffar Khan v. Government of Pakistan* (2013 SCMR 304); *Government of Khyber Pakhtunkhwa, Workers Welfare Board v. Raheel Ali Gohar* (2020 SCMR 2068); *Owais Shams Durrani v. Vice-Chancellor Bacha Khan University* (2020 SCMR 1041); *Sui Southern Gas Company Ltd. v. Zeeshan Usmani* (2021 SCMR 609); *Government of Khyber Pakhtunkhwa v. Saeed ul Hasan* (2021 SCMR 1376); *Khushal Khan Khattak University v. Jabran Ali Khan* (2021 SCMR 977); *Pakistan Telecommunication Company Ltd. v. Muhammad Samiullah* (2021 SCMR 998); *Government of Khyber Pakhtunkhwa v. Sher Aman* (2022 SCMR 406); *Deputy Director Finance & Administration FATA v. Dr. Lal Marjan* (2022 SCMR 566); and most recently, *Vice Chancellor Agricultural University, Peshawar v. Muhammad Shafiq*¹⁰³. The *ratio decidendi* of these precedents

¹⁰¹ *Major @ Waqar Ali Shah v. Nawab Ali*, 2015 PLC (C.S.) 1137.

¹⁰² *Abdullah Mangi v. Pakistan International Airlines Corporation* (2005 SCMR 445).

¹⁰³ Judgment dated 17-01-2024 in C.P. No. 2270/2019 and connected petitions.

is that absent a statutory basis for regularization, an employee has no fundamental or vested right to regularization.

27. I do not include the case of *SSGC v. Saeed Ahmed Khoso* (2022 SCMR 1256) in the above discussion as in my humble opinion that case is not entirely relevant to the issue at hand. There the question was not of regularization, and the writ petition had been brought against termination from service.

28. Adverting to the case-law relied upon by learned counsel for the Petitioners, it is correct that in *State Oil Company Ltd. v. Bakht Siddiqui* (2018 SCMR 1181) and *Pir Imran Sajid v. Managing Director, Telephone Industries of Pakistan* (2015 SCMR 1257), the right to life and livelihood in Article 9 of the Constitution was cited to deprecate denial of regularization to employees who had given the prime of their life to the employer. However, in both those cases the High Court had exercised writ jurisdiction to implement a policy of the Federal Government for regularizing contract employees. In *Bakht Siddiqui*, that is apparent from the judgment of the High Court reported at 2017 PLC (C.S.) 1192. In *Pir Imran Sajid* that fact is noted in paras 3 and 10 of the judgment. It was therefore in the context of enforcing a Government policy on regularization that a reference was made to Article 9 of the Constitution. In the petitions before us there is no statute or Government policy that the Petitioners can rely on for regularization.

29. *Ikram Bari v. National Bank of Pakistan* (2005 SCMR 100) was not a case emanating from Article 199 of the Constitution, but the Supreme Court was seized of petitions for leave to appeal under Article 212(3) of the Constitution from the judgment of the Federal Service Tribunal. There again, it was a regularization policy issued by the employer that was implemented. *Government of Khyber Pakhtunkhwa v. Muhammad Azam* (2016 SCMR 1375) was a case involving a special statute for regularization. In *Ejaz Akbar Kasi v. Ministry of Information & Broadcasting*, 2011 PLC (C.S.) 367, the Supreme Court was exercising jurisdiction under Article 184(3) of the Constitution. *Rizwan Javed v.*

Secretary Agricultural Livestock (2016 SCMR 1443) and *Qayyum Khan v. Divisional Forest Officer, Mardan* (2016 SCMR 1602) were cases of Government project employees. Order dated 07.01.2020 in *SSGC v. Federation of Pakistan* (C.P. No. 1313 to 1317 of 2019 etc.) was a leave refusing order that did not enunciate a point of law, and therefore not precedent. All of these cases cited by learned counsel for the Petitioners are therefore distinguishable.

30. In conclusion, when there is no statute or Government policy applicable to the SSGC requiring or enabling it to regularize contract employees, no writ can issue to it to do so under Article 199(1)(a) of the Constitution. In such circumstances, the refusal of the SSGC to regularize the Petitioners does not infringe their fundamental rights in Articles 9 or 25 of the Constitution and does not entitle them to invoke the writ jurisdiction of the High Court. The petitions are therefore dismissed.

JUDGE