

IN THE HIGH COURT OF SINDH AT KARACHI  
CP. No. D-5473 of 2017  
(*Umer Ansari and others v Province of Sindh & others*)

Date	Order with signature of Judge
	Before: Mr. Justice Muhammad Karim Khan Agha Mr. Justice Adnan-ul-Karim Memon

**Date of hearing and Order: 23.04.2025**

M/s. Ali Assadullah Bullo and Faizan Hussain Memnon advocate for the petitioners.  
Mr. Ali Safdar Deepar AAG  
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**O R D E R**

**Adnan-ul-Karim Memon, J:** Petitioners through this petition are seeking a declaration to the effect that the direction to the impugned advertisement dated 23-6-2017 is illegal, against equity, discriminatory, violative of Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973, and set aside the same. They are also seeking direction to the respondents to consider the case of Petitioner No. 1 in light of the Sindh (Regularization of Adhoc & Contract Employees) Act, 2013, and to include their names in the summary floated to the Chief Secretary and consider their cases for regularization

2. It is the case of the petitioners that they qualified and were appointed to permanent BS-16 to 19 positions in the LARMIS Management project between 2013 and 2015, following a 2012 advertisement. Despite satisfactory service and the project's permanent nature, evidenced by a sanctioned budget in 2017-18, the Respondents advertised to refill their posts instead of regularizing them. Simultaneously, a regularization list for other staff omitted the Petitioners, listing their filled positions as vacant. The Petitioners submitted that this is malicious and discriminatory, as they work alongside those recommended for regularization. Petitioner No. 1 submitted that he was appointed in 2013, was not considered under the Sindh (Regularization of Adhoc & Contract Employees) Act, 2013. However, they averred that this malafide action unfairly jeopardizes their careers. They added that the Respondents' failure to recommend them for regularization, coupled with the advertisement and vacancy listing, violates principles of natural justice, equity, constitutional rights (Articles 4, 9, 18, 25(b)), and Islamic injunctions. They asserted their qualifications and experience warrant regularization and cite legal precedents (**1995 SCMR 650, 2005 SCMR 25, 2001 SCMR 256**), emphasizing fair, just, and non-arbitrary exercise of discretionary power, arguing the Respondents' actions constitute unlawful discrimination.

3. Learned counsel for the petitioners withdrew prayer clauses (ii) and (iii). This court directed counsel to address whether the prayer clause (i) to declare the 23-6-2017 advertisement illegal and discriminatory had become irrelevant. While withdrawing the request for consideration under the Sindh (Regularization) Act 2013 (prayer ii) and inclusion in the regularization summary (prayer iii), counsel insisted on referring the matter to the Sindh Public Service Commission (SPSC) for fresh assessment for the Assistant Accounts Officer, Assistant Director (Finance), Network Operation Center Engineer, and Assistant Director (Electrical) posts. This court needs to decide whether BS-16 and above posts should be filled by the SPSC, whether the petitioners are qualified based on their contingent/contract appointments in the respondent department, and if the cases of the remaining petitioners should be referred to the SPSC for fresh assessment/interview.

4. The learned counsel for the petitioners filed a statement and submitted that the Government of Sindh has formulated a policy for the regularization of contract employees, as per the Cabinet decision dated 29.03.2018. This policy is binding on the Respondents under Rule 42 of the Sindh Rules of Business, 1986. He further submitted that this Court, vide Order dated 14.01.2022, passed in CP No. D-128 of 2022 directed the competent authority to forward the petitioners' cases for assessment of their eligibility through the Sindh Public Service Commission, in conformity with the Supreme Court's judgment in *Dr. Naveeda Tufail's case* (2003 SCMR 291). He also relied upon the judgment reported in **2025 SCMR 104**, wherein the Supreme Court upheld the directions of this Court for assessing the suitability of contract employees for regularization through the Public Service Commission. Learned counsel stated that Petitioners No. 1, 3, 6, and 7 resigned during the petition's pendency and wish to withdraw. An amended title reflecting this has been filed. Counsel requested that the captioned petition be allowed for the remaining petitioners.

5. The learned AAG opposed the petition, stating that the 2012 advertisement for contractual posts, including Assistant Accounts Officer (the petitioner's position), did not lead to immediate recruitment for all roles. Due to a recruitment ban, the petitioners were temporarily engaged on a contingency basis for a time-bound computerization project. Following the ban's lift, a transparent NTS-based recruitment process was initiated for permanent civil positions created after the project's initial

phase. The AAG argued that considering the petitioners, who were initially hired for 89-day contingency roles against a project budget that has since expired, for these permanent positions would violate the rights of other eligible Sindh residents and APT Rules 1974. He clarified that a summary (Flag-C) sought approval for contractual recruitment via NTS, not regularization of contingent staff, who, according to the Sindh Government Servants (Regularization Act) 2013 (Flag-D), do not qualify due to their initial temporary and contingency-based appointments. The AAG concluded that only those with regular contracts from the 2012 advertisement meeting specific criteria are eligible for regularization, which the petitioners do not. However he added that in adherence to the interim orders issued on August 18 and November 14, 2017, the Chief Secretary of Sindh, under APT Rules 1974, sanctioned paragraphs 6 and 7 of the note on November 16, 2017 (attached as Annexure-A). This approval permitted the continuation of twenty-three (23) employees temporarily from July 1 to December 31, 2017. However, the AAG stressed that the recruitment process for these positions on a contract basis had been finalized. He further elaborated that the relevant recruitment rules, already drafted and submitted to the SGA&CD Department of the Sindh Government via a letter dated July 20, 2017, for consultation as per Section 3(2) of the Sindh Civil Servants (APT) Rules 1974, have also been finalized, and subsequently, these positions are required to be forwarded to the SPSC for permanent selection. The learned AAG pointed out that the petitioners initiated this Constitution Petition on August 17, 2017, following their participation in the NTS test conducted on August 13, 2017. To ensure fairness for all NTS test participants, including the petitioners, interview letters were issued to ten out of eleven petitioners who scored 33 marks or higher. Nevertheless, the AAG clarified that the ultimate decision regarding filling these posts rests with the Court's judgment in this case. Lastly, he asserted that the interview process was merely a step to complete the recruitment procedure, and its outcomes were intended for submission to the Court for further direction.

6. We have heard the learned counsel for the parties and perused the material available on record and case-law cited at the bar.

7. Petitioners' counsel opposed the competent authority's view, citing Dr. Naveeda Tufail v. Government of Punjab (2003 SCMR 291). Based on this, counsel argued that the petitioners' case for permanent appointment should be referred to the SPSC for a fresh interview according to recruitment rules.

8. After careful consideration, this court finds that BPS-16 and above posts fall under the Sindh Public Service Commission's (SPSC) purview, according to Rule 3(1)(i) of the Sindh Public Service Commission (Functions) Rules 1990, requiring a competitive process and public advertisement. The Respondent department failed to follow this mandatory procedure, instead appointing petitioners on a contingent/contract basis for higher-scale posts and attempting regularization under the 2013 Act without proper recruitment rules. This court disapproves of this, citing the Supreme Court's emphasis on legal appointment procedures in Ali Azhar Khan Baloch v. Province of Sindh (2015 SCMR 456). While acknowledging that the SPSC is not always mandated to test for contractual BPS-16 and BPS-17 posts (Section 4(1) of the Rules), this court of the considered view that higher-scale posts must be filled competitively and cannot ignore the Supreme Court's findings. The Respondents' attempt at contractual recruitment with intended regularization violates established Rules and the Supreme Court's judgment.

9. Drawing an analogy from the present situation and, more importantly, guided by the principles established by the Supreme Court of Pakistan in the cases of Dr. Naveeda Tufail and 72 others v. Government of Punjab and others (2003 SCMR 291) and Shahzad Shahmir and others v Government of Sindh & others (2021 SCMR 824). The Dr. Naveeda Tufail case shows that the Federal Government regularized ad hoc employees through the Public Service Commission. While the Petitioners, as provincial contract employees, cannot automatically claim this, Article 25 of the Constitution calls for equal treatment. In Naveeda Tufail, the Supreme Court recognized a legitimate expectation of regularization for Punjab's ad hoc lecturers due to continuous ad hoc appointments. The Supreme Court directed the Punjab government to regularize them via the Punjab Public Service Commission, following the Federal model with some concessions, ensuring separate consideration from direct recruits and non-retention of unsuitable candidates. This case highlights the need for fairness and the Public Service Commission's role in regularization. However, the Supreme Court in the case of Shahzad Shahmir held that appointments to BPS-17 under Article 242 of the Constitution must be made by the Sindh Public Service Commission (SPSC), rendering contract appointments to such posts illegal from the outset. Consequently, the petitioners had no legal right to continued employment, as their contract appointments were not in accordance with the law. Despite this, the High Court had granted some benefits, which the Supreme Court noted the petitioners were likely not entitled to. Ultimately, the Supreme Court

found no merit in the petitions and dismissed them. An excerpt whereof is as under:-

*“5. Be that as it may, the very appointments in BPS-17, as per law, made under Article 242 of the Constitution, have to be made by the Sindh Public Service Commission (SPSC), and no contract employment could have been made on such posts. Thus, the appointments of the petitioners, as observed by the High Court of Sindh, Karachi (the High Court) in its impugned order, were on their very face illegal and, therefore, in our view, no right whatsoever existed with the petitioners to continue with the employment, more so, when the very contract appointments were not in accordance with law.*

*6. Be that as it may, the High Court has given certain directions in its impugned order dated 19.01.2021 extending some benefits to the petitioners, though we note that such entitlement to the benefits, apparently, was not available to the petitioners.*

*7. In view of the above, we find no merit in these petitions, which are dismissed and leave refused.”*

10. Given the LARMIS project's integration into the Sindh Government with budgetary allocation, this court deems it suitable to forward the petitioners' candidatures to the SPSC for interviews, if they wish to regularize their services within LARMIS. This will allow an assessment of each individual's suitability for their current post according to applicable recruitment rules.

11. For the aforesaid reasons and the Supreme Court's upholding of this court's decision in *Shahzad Shahmir case*, the competent authority of Respondent Department is directed to forward the cases of interested petitioners to the Sindh Public Service Commission (SPSC) for a fresh interview/assessment for regular appointments within three months from this order. This referral will be based on verification of their qualifications and adherence to the Recruitment Rules, considering the principles in *Dr. Naveeda Tufail* and *Shahzad Shahmir's* cases. In the intervening period, the petitioners will retain their current positions unless they have already vacated them.

12. This petition stands disposed of in the aforesaid terms.

JUDGE

Head of Const. Benches