

**IN HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

***CP No. D-1084 of 2023***

**PRESENT:**

MR. JUSTICE ARBAB ALI HAKRO

MR. JUSTICE RIAZAT ALI SAHAR

Petitioner : Kaleemullah through Mian Taj  
Muhammad Keerio, Advocate.

Respondents: Through Mr. Muhammad Ismail  
Bhutto, Additional Advocate General  
Sindh.

Date of Hearing : **25.03.2025**

Date of Decision : **25.03.2025**

**JUDGMENT**

**RIAZAT ALI SAHAR J:** -Through this Judgment, we intend to dispose of captioned petition filed by the petitioners with following prayers:-

- A. To direct the respondents to finalize the pension case of the petitioner, and he may be given all retirement dues/benefits as per law.*
- B. Interim orders solicited whereby directing the respondents to at once start giving pension to the petitioner.*
- C. Costs of the petition may be saddled upon the respondents.*
- D. Any other relief(s) which this Honourable Court deems fit, just and proper in favour of the petitioners.*

**2.** The petitioner in the present case has contended that he was initially appointed in the Food Department on a contingent paid basis on 05.04.1991 and was later regularized on 07.07.2005 as Chowkidar (BPS-1). Subsequently, he was

granted BPS-2 on 01.07.2007. The petitioner after reaching the age of superannuation, he retired from service on 31.10.2022, pursuant to the retirement order dated 27.10.2022 issued by the Food Controller, Shaheed Benazirabad. As per due procedure, the petitioner processed his GP Fund and pension case, which was duly forwarded to the District Accounts Officer, Shaheed Benazirabad, for finalization. However, despite fulfilling all formal requirements, the petitioner's pension and retirement benefits have not been finalized by respondent No.4. The petitioner has further contended that the inaction on part of the concerned authorities is not only unjust but also contrary to the directives of the Government and binding precedents of the superior courts, which mandate that retirement benefits be disbursed promptly upon retirement. The Food Department has also issued a letter dated 01.02.2023 along with a report dated 24.01.2023 from the District Food Controller, requesting urgent finalization of the petitioner's pension case. Owing to this undue delay, the petitioner and his family are suffering extreme financial hardship and are on the verge of hunger. If this situation continues, it may result in an unfortunate incident, for which the authorities will be responsible.

**3.** Pursuant to the Court's notice, respondents No.3 and 4 filed their respective comments. Respondent No.3 stated that the pension papers of the petitioner were duly prepared and forwarded to the District Accounts Officer, Shaheed Benazirabad, for finalization. Respondent No.4 admitted the petitioner's initial appointment on 05.04.1991 on a contingent paid basis and his subsequent regularization on 07.07.2005 as Chowkidar. Consequently, on scrutiny of the petitioner's pension case, it was observed that the Food Department had erroneously allowed his retirement by reckoning his service from the date of initial contingent appointment instead of the date of regularization. The matter was referred to the Finance

Department, Government of Sindh, which endorsed the Supreme Court's judgment and the petitioner's case, was returned to the District Food Controller for re-fixation of basic pay by excluding the contingent period and for recalculation of pension.

4. In rebuttal, the petitioner submitted a rejoinder, stating that the judgment relied upon by respondent No.4 has no applicability to his case. He submitted that the stance taken by respondent No.4 contradicts existing government rules and circulars, particularly the Finance Division's Office Memorandum No.F-3(12) Reg., dated 02.04.1975. As per the said circular and the guidelines contained in the "Drawing & Disbursing Officers" (DDOs) Handbook, Chapter IX – Pension Rules, continuous service rendered by contingent paid staff prior to their regularization is to be fully counted from 01.10.1975 onwards, and service before that date is to be counted as half for the purpose of pension. Thus, the petitioner's qualifying service should rightly include his contingent paid period and the rejection of his pension claim on the contrary basis is unjustified and without legal sanction.

5. Learned counsel for the petitioner argued that argued that the petitioner, having served in the Food Department continuously since 1991, first on a contingent paid basis and later regularized in 2005, is entitled to the counting of his entire length of service for the purpose of pensionary benefits. He emphasized that the petitioner's retirement was effected in accordance with the law, and the necessary pension documents were processed and forwarded to the concerned authorities. Despite this, the respondents failed to finalize the petitioner's pension and retirement dues, as such, they have violated the constitutional and legal rights of the petitioner. Learned counsel has argued that the reliance of respondent

No.4 on the judgment of the Honourable Supreme Court has no bearing on the petitioner's case, which is distinguishable on facts. In support of his contentions, learned counsel placed reliance on an unreported judgment of this Court in ***Mohammad Khan Naich v. Federation of Pakistan and others* (C.P. No.D-6685 of 2022)**, wherein it was held that contingent paid service is countable towards pension under applicable government instructions. He also relied on the reported case ***Messrs State Oil Company Limited v. Bakht Siddique and others* (2018 SCMR 1181)**, arguing that legitimate expectations and vested rights of employees cannot be defeated by technical interpretations.

6. Learned Additional Advocate General Sindh, on the other hand, opposed the petition and argued that the petitioner's regularization is not in dispute, his pre-regularization service cannot be treated as qualifying service for the purposes of pension. He contended that the Finance Department has rightly returned the petitioner's pension case for re-fixation of pay after excluding the contingent period; thus, the delay in finalization of pension benefits was not arbitrary but based on legal guidance provided by the competent authority.

7. We have heard the learned counsel for the petitioner, learned A.A.G. Sindh for the respondents and perused the material available on record very carefully.

8. As per record, the facts of this case establish beyond doubt that the petitioner was appointed in the Food Department on a contingent paid basis on 05.04.1991, subsequently he was regularized on 07.07.2005 and retired from service on attaining the age of superannuation on 31.10.2022. The uninterrupted service of the petitioner spanning over three decades is a matter of record. It is not denied by the respondents that the petitioner

continued to perform duties of a regular nature throughout this period. The only point of contention raised by respondent No.4 is that the petitioner's contingent service prior to regularization cannot be counted for pension purposes.

**9.** We would like to emphasize that the petitioner was a contingent paid employee, whose service conditions are regulated by distinct and well-settled principles of administrative law. The Government of Pakistan, Finance Division, through its Office Memorandum No.F.3 (12) Reg.6/75 dated 02.04.1975, has explicitly provided that the continuous service rendered by contingent paid staff, from 1st October 1975 onwards, shall count in full towards pension, and service prior to that date shall count in half.

**10.** The petitioner, having been in continuous service since 1991, squarely qualifies under the above provision. His contingent period was not discontinuous *ad hoc* engagement but a full-time assignment carrying regular duties, which continued seamlessly until his regularization. Disregarding this service, merely due to the technical label of "contingent paid," is not only irrational but also violative of the fundamental principles of equity and fairness that strengthen administrative justice. Moreover, the petitioner's pension case had already been duly processed by the competent authority and forwarded for finalization. It is, therefore, inconceivable that his claim could be returned or rejected without legal justification.

**11.** Moreover, this Court cannot lose sight of the statutory protections afforded to employees like the petitioner under the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, which was enacted with the clear legislative intent to regularize the services of those who had been serving the Government on adhoc, contract or similar non-permanent bases explicitly excluding only daily-wage and work-

charged employees. The petitioner, having served as a contingent paid employee, falls within the broader phrase “or otherwise” used in Section 3 of the said Act. Consequently, by operation of law, his appointment is to be deemed validly regularized and he is entitled to be treated as holding a regular post from the inception of his service. This statutory regularization supports the petitioner’s claim that his entire continuous service from 05.04.1991 must be counted toward qualifying service for the purpose of pensionary benefits. The considering provision of this Act further nullifies the objection raised by the respondents that the petitioner’s pre-regularization service cannot be considered. When read agreeably with the Finance Division’s O.M. dated 02.04.1975, the 2013 Act provides clear legislative authority for recognizing contingent service as pensionable where regularization has occurred, as is the case here.

**12.** The petitioner’s long-standing service was uninterrupted and rendered under the direct administrative control of the department followed by formal regularization in 2005. Moreover, the Government of Pakistan’s Finance Division O.M. dated 02.04.1975 and the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 expressly permit inclusion of contingent service toward qualifying service for pension as it falls within the broader phrase “or otherwise” of the said Act, 2013. The petitioner’s entitlement, therefore, flows not from discretionary policies but from established statutory rules and circulars which clearly recognize the value of contingent service for pensionary purposes.

**13.** Moreover, the principle laid down by the Honourable Supreme Court in *Messrs State Oil Company Limited v. Bakht Siddique and others* (2018 SCMR 1181) is directly applicable here. The Apex Court, while addressing the rights of long-

serving employees engaged under non-regular capacities, held that such workers, who had devoted decades to the employer and performed duties of permanent nature, could not be denied the benefits of regular employment merely on technical grounds. Crucially, the Court observed that for pensionary and other long-term benefits available under the law, such employees are to be deemed entitled from the date they joined service. This pronouncement reinforces the concept that service, and not the nomenclature of appointment, is determinative of pension rights.

14. It is a trite principle that pension is a constitutional right, not a discretionary favour. The Honourable Supreme Court has consistently held that pension is a form of deferred wages, a vested right, protected under Article 9 of the Constitution, as it is a very important part of the right to life and dignity. In the present case, the unjustified delay and denial of pension not only infringe upon this constitutional guarantee but also amount to gross administrative indifference. The petitioner, after serving the State for more than 31 years, is now left without the means to support himself and his family. The hardship resulting from this unlawful denial is not abstract but real and ongoing and such bureaucratic rigidity cannot be condoned by a court of law. Thus, we hold that the petitioner's contingent service from 05.04.1991 to 06.07.2005 is liable to be counted toward qualifying service for pension, in accordance with applicable government circulars and authoritative pronouncements of the superior judiciary. The objections raised by respondent No.4 are misconceived and contrary to law. The act of the Finance Department in returning the pension case for exclusion of the contingent period is without lawful authority and of no legal effect.

**15.** In view of the above discussion, this petition is **allowed**. The respondents are directed to forthwith finalize the petitioner's pension case by including the period of contingent paid service from 05.04.1991 to 06.07.2005 as part of qualifying service. All pensionary and retirement dues shall be calculated and disbursed to the petitioner within a maximum period of sixty (60) days and immediately start pension to the petitioner, failing which the concerned officials shall be held personally accountable for willful delay and appropriate costs and compensatory relief may be imposed.

**16.** A copy of this judgment shall be transmitted to the Secretary, Finance Department, Government of Sindh for compliance.

JUDGE

JUDGE

\*Abdullahchanna/PS\*