

IN HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

CP No. D-168 of 2024

PRESENT:

MR. JUSTICE ARBAB ALI HAKRO
MR. JUSTICE RIAZAT ALI SAHAR

Petitioner : Sajjad Hussain through Mr.
Bakhtiar Ali Panhwar, Advocate.

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

Date of Hearing : 15.04.2025

Date of Decision : 15.04.2025

JUDGMENT

RIAZAT ALI SAHAR J: -Through this petition, the petitioner contends in his petition that he was appointed as Family Welfare Assistant (Male) (BPS-5) on 07.03.2012 in the Population Welfare Department on a contract basis under the Disabled Quota and retired on 09.06.2021. According to the petitioner, he was regularized on 09.08.2019 through a notification issued by the respondents, which explicitly stated that his regularization would be effective from 25.03.2013, i.e., the commencement date of the Sindh Civil Servants (Regularization of Adhoc and Contract Employees) Act, 2013 (Sindh Act No. XXV of 2013). Subsequently, another notification was issued on 07.04.2022, granting the petitioner the benefit of condonation of deficiency in qualifying service for pension and gratuity purposes. The petitioner contends that he only received an amount of Rs.171,120/-, disbursed to his bank account on 17.09.2021, and despite repeatedly approaching the respondents for the release of his pension and retirement benefits, he has been denied on the ground that the payment has already been made. He claims that his repeated efforts to obtain a response or redressal

from the respondents have been ignored. Consequently, the petitioner filed instant petition, with following prayers:-

- A). Direct respondents to release pensionary benefits viz. pension, gratuity, and insurance, benevolent fund, GP fund and others pension fund etc. of petitioner forthwith.*
- B). Costs of the petition may very kindly be awarded to petitioner.*
- C). Any other relief(s) which this Honourable Court deems fit, just and proper in favour of the petitioner may be granted.*

2. Pursuant to the Court's notice, respondent No.2 filed his comments wherein he admits that the petitioner was initially appointed on a contract basis on 07.03.2012 and was subsequently regularized with effect from 25.03.2013. However, he disputes the petitioner's contention regarding condonation of deficiency in qualifying service for pensionary benefits. He contends that the notification dated 07.04.2022 clearly allows condonation of deficiency in service for a period of only two years, whereas the petitioner's regular service tenure is 7 years, 11 months, and 12 days. He further contends that under the applicable rules, a minimum of 10 years of qualifying service is required to be eligible for pension benefits. On the basis of these assertions, respondent No.2 prays for dismissal of the petition.

3. Learned counsel for the petitioner contends that the petitioner was appointed under the Disabled Quota and duly regularized with retrospective effect from 25.03.2013 under the Sindh Regularization Act. He contends that despite the issuance of a subsequent notification dated 07.04.2022 allowing condonation of deficiency for pension/gratuity, the petitioner has been unfairly denied full retirement benefits. He contends that the petitioner served for nearly 8 years in regular service and considering his disability and limited earning capacity post-retirement, his case warrants sympathetic consideration. He further contends that the denial of benefits is unjust and contrary to the spirit of welfare laws aimed at protecting disabled employees.

4. On the other hand, learned A.A.G. Sindh adopts the stance of respondent No.2 and contends that the petitioner's regular service falls short of the mandatory 10-year verge required under the relevant rules for pensionary benefits. He contends that the condonation of deficiency under the notification dated 07.04.2022 is limited to a maximum of two years, which still does not qualify the petitioner. He also contends that the benefits already disbursed were as per entitlement and that the petitioner's claim beyond this is legally untenable. Hence, he prays for dismissal of the petition.

5. 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.

6. After having considered the submissions of both parties and the material available on record, it is evident that the petitioner, a disabled person, was appointed as Family Welfare Assistant (Male) (BPS-5) in the Population Welfare Department on 07.03.2012 and served in that capacity until his retirement on 09.06.2021. His regularization, though formally notified on 09.08.2019, was made effective retrospectively from 25.03.2013, in accordance with the Sindh Civil Servants (Regularization of Adhoc and Contract Employees) Act, 2013. As such, his regular service spans a period of 7 years, 11 months and 12 days, which falls short of the ten years qualifying service required for entitlement to pensionary benefits under the applicable rules.

7. It is also not in dispute that a notification dated 07.04.2022 was issued by the department regarding condonation of deficiency in qualifying service. However, the respondents rely on the following directive contained in the said notification: *"It is once again reiterated that, with the approval of the competent authority i.e., Chief Minister, Sindh, Administrative Departments are advised to desist from seeking condonation of deficiency period beyond two years in qualifying service of a government servant for the purpose of grant of pension."* On the basis of this language, the respondents took

stance that the petitioner is ineligible for further relief as his shortfall exceeds the two-year limit mentioned therein.

8. It is worthwhile to note here that we are conscious of the fact that the difference between the petitioner's qualifying service and the statutory minimum is marginal i.e. just over one month beyond the two-year condonable period. Furthermore, the petitioner belongs to the Disabled Quota and his employment and retirement must be regarded through the lens of social welfare, equity and constitutional protections afforded to marginalized persons in special circumstances. The purpose of condonation, especially in the case of disabled employees, is to ensure they are not deprived of survival and post-retirement security merely due to procedural or marginal deficiencies which are beyond their control. Denying him pensionary benefits in such circumstances would defeat the very objective of the welfare statutes, particularly the Sindh Regularization Act and provisions ensuring protection of disabled persons under constitutional principles of equality, non-discrimination and right to life with dignity (Articles 9 and 25 of the Constitution of Islamic Republic of Pakistan, 1973).

9. It would also be essential to note that we are also aware that the petitioner has already been paid a partial amount of Rs.171,120/- towards retirement dues, but this amount alone cannot be deemed sufficient to sustain his post-retirement livelihood, especially when seen in light of his sincere expectation of full retirement benefits. It also appears from the record that despite repeated efforts by the petitioner, the respondents have neither redressed his grievance nor provided a formal decision rejecting his claim, thereby denying him a reasonable opportunity of being heard a right well-recognized under principles of natural justice.

10. In view of what has been discussed above, while no such direction can be issued for the release of full pensionary benefits in the absence of specific authority under current rules, this petition is disposed of with a direction that the petitioner may submit a detailed representation to the competent authority within three weeks from

today, specifically requesting further relaxation of the shortfall in qualifying service. If such a representation is filed, the **competent authority** is directed to consider the same sympathetically and in accordance with law keeping in view the petitioner's disability status, nearly complete qualifying service and the spirit behind the regularization and condonation notifications. A well-reasoned speaking order shall be passed within one month of receipt of such representation and the petitioner shall be duly informed. The competent authority shall also consider whether further condonation, beyond the standard two years, may be granted under exceptional circumstances in the interest of justice and equity.

A copy of this judgment shall be transmitted to the competent authority of the Population Welfare Department for compliance.

JUDGE

JUDGE

Abdullahchanna/PS