

# THE HIGH COURT OF SINDH, KARACHI

**Before:**

**Justice Mohammad Karim Khan Agha**

**Justice Adnan-ul-Karim Memon**

**CP No D-1123 of 2021**

(Rizwan Akbar Arain v. Federation of Pakistan & others)

Petitioner : through Mr. Hussain Bux Sario, advocate.  
Respondent Nos. 2&3 : Ms. Nasima Mangrio advocate  
Respondent No. 1 : Ms. Zehra Sahar, Assistant Attorney General  
Date of hearing : 15-05-2025  
Date of order : 15-05-2025

## **ORDER**

**Adnan-ul-Karim Memon, J.** The Petitioner requests for this Court's declaration that the Respondents/ National Highway Authority's (NHA) failure to issue a seniority list is unlawful and violates his fundamental constitutional rights. He also seeks a court order directing the Respondents to regularize his employment according to government policy and the Cabinet Sub-Committee's decision, granting him the same benefits as his colleagues received. Additionally, he asks this Court to mandate that the Respondents provide him with the time-scale promotion under SRO 1404(I)/2019, effective from January 31, 2020, consistent with his peers.

2. Appointed as an Accounts Assistant on daily wages in 2009, the Petitioner was omitted from the 2011 regularization notification for federal government employees, despite meeting the eligibility criteria. His appeals were ignored, leading to decision rendered by this Court in earlier round of litigation in 2012 directing regularization of the petitioner within 30 days. This order was not fully complied with, resulting in contempt proceedings and subsequent this Court's orders in 2013 and 2014, directing proper seniority from the 2011 notification date. However, the Petitioner's regularization was done only effective from March 2013, causing him seniority and financial losses as his colleagues, in the intervening period, received time-scale promotions in 2020 while he was left behind.

3. Learned counsel for the petitioner argued that the Respondents failed to follow the Cabinet Sub-Committee's regularization policy, did not publish a mandatory seniority list, and unfairly excluded him from the 2020 time-scale promotion, causing discrimination and financial harm. His counsel contended that

his juniors are now senior to him, despite his longer service and competence couple with the higher qualification. He asserted that the Respondents violated his fundamental rights (Articles 4, 9, 18, & 25 of the Constitution) and the principle of equal treatment. He cited the Supreme Court precedents against arbitrary discretion and mala fide actions on the part of the respondent NHA, he argued that the delay in his regularization of service was intentional and discriminatory just to allow his juniors to seniority over him as well as financial loss. He seeks a declaration that the non-issuance of a proper seniority list is illegal, a direction for regularization with full benefits from the 2011 notification date in terms of order dated 25.08.2014 passed by this Court in C.P. No.D-308 of 2012, and the grant of the time-scale promotion from January 31, 2020, along with any other just relief as granted to the colleagues of the petitioner by the respondent department.

4. The learned counsel for the respondents has opposed the petition with the narration that this petition is not maintainable under Article 199 of the Constitution. She further submitted that the petitioner was initially appointed as Accountant Assistant on daily wages vide office order dated 18.03.2009 against the project post of Makran Coastal Highway and his subsequent joining report dated 04.02.2011, whereas the services of daily wages employees of NHA were regularized in 2011 and 2013 as per decision of Cabinet Sub-Committee who fulfilled the eligibility criteria i.e daily wages employees who completed three or more consecutive spells of 189 days as on cut of dates of 30.06.2011( First Phase) and 31.12.2012 (Second Phase), their age has to be less than 50 years in NHA, they must be in service of NHA as cut of date 30.06.2011 and 31.12. 2012. She further submitted that petitioner was rightly dropped from the list of eligible for regularization because his daily wages service was expired on 16.06.2011 and he was not in active service of NHA when working paper forwarded to Cabinet Sub-Committee, however the list of left over employees including the petitioner was forwarded to the Cabinet Sub-Committee for consideration, who did not consider the same till 08.03.2013 and NHA had no role in such affairs. She further submitted that Accountants cadre employees of NHA were upgraded on 03.11.2011. On the issue of time scale, she argued that the grant of Time-Scale promotion cannot be granted in the case of Accountant cadre till decision of Islamabad High Court and the petitioner and other have obtained status-quo order from the Islamabad High Court against the rescindment. She lastly prayed for dismissal of the instant petition. Learned AAG has adopted the version of the learned counsel representing the NHA.

5. We have heard the learned counsel for the parties on the maintainability of the instant petition and perused the record with their assistance.

6. Regarding the Petitioner's regularization, through court order dated 28.11.2012 in CP. No- D-308 of 2012, mandated the processing of his case after an initial omission. Following his 2019 contempt application alleging non-compliance, this Court noted his regularization from March 8, 2013, with compliance report submitted by the respondent NHA. The Petitioner's demand for regularization from his initial contract date was rejected, as seniority is determined from the date of regular appointment. Finding substantial compliance with the 2012 order in the aforesaid proceedings and citing a Supreme Court precedent against retroactive regularization, this Court dismissed the contempt application in earlier round of litigation.

7. Petitioner's initial request for regularization with benefits from retrospect effect is not feasible at this stage to be discussed for the reason that petitioner earlier case has already been set at naught, the Petitioner now seeks this Court's order for the release of the seniority list, as per the order dated September 2, 2013 in earlier round of litigation, and the same time-scale promotion (under SRO 1404(I)/2019) granted to his colleagues from January 31, 2020, subject to final outcome of the decision of the Islamabad High Court if not earlier released. Recognizing this issue, we direct the Respondents' competent authority to resolve his seniority and time-scale promotion issues within three months after hearing the Petitioner subject to final decision of the learned Islamabad High Court if not decided earlier.

8. This petition is disposed of under these terms.

JUDGE

HEAD OF CONST. BENCHES

SHAFI