

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No D-5649 of 2020
(Asif Ali & 22 others v Federation of Pakistan & others)

Constitutional Petition No D-8209 of 2018
(Syed Wahid Ali & 21 others v Federation of Pakistan & others)

Constitutional Petition No D-9012 of 2018
(Syed Aneesuddin & 30 others v Federation of Pakistan & others)

Constitutional Petition No D-3553 of 2019
(Fida Muhammad & 10 others v Federation of Pakistan & others v Federation of Pakistan & others)

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

Date of hearing and order:- 30.04.2025

Mr. Ali Asadullah Bullo advocate for the petitioners.
Mr. Khalid Javed advocate for the respondent-PIDC
Ms. Wajiha Mehdi, Assistant Attorney General.

ORDER

Adnan-ul-Karim Memon, J., The Petitioners employees of Karachi Tools, Dies and Moulds Centre (KTMDCC)/ Respondent No.2 (a subsidiary under government control), seek regularization of their services. Despite indications of intended regularization, they remained regularized after years of continuous service with effect from 2008 and onwards in permanent positions. Citing similar court judgments, they submitted their entitlement to regularization and now facing age limitations for other jobs, they fear the significant loss of retirement benefits if not regularized. Despite requests, Respondent No.2 has not acted. The petitioners request this Court direct the Respondents to regularize their services from the applicable dates. Their counsel also emphasized their long service since 2007/2008 and requested that the petitions be allowed.

2. The counsel representing the respondent No.2 company opposed the petitions, stating they could not be upheld due to the absence of statutory service rules for the respondents-KTDMC. While he recognized the petitioners' lengthy service, their claims of employment, governmental oversight of the entity, and the risk of losing retirement benefits, he argued that these elements alone do not provide adequate justification for regularization in the absence of relevant law or policy, which he asserted is missing in instant petitions. Consequently, he concluded that the petitions may be dismissed on the aforesaid analogy.

3. We have heard the learned counsel for the parties and perused the record with their assistance and case law cited at the bar.

4. KTDMC is a subsidiary company of Pakistan Industrial Development Corporation (PITDC) and registered with Securities & Exchange Commission of Pakistan (SECP) under Section 42 of the Companies Act, 2017 to operate as a non-profit organization, under the Ministry of Industries & Production, KTDMC is fully governed by the Board of Directors, as required by the public sector companies (Corporate Governance) Rules, 2013 as amended upto date, however, it is urged that the respondent-company has no statutory services rules or a policy of regularization of service for its employees and in absence thereof, constitutional petition under Article 199 of the Constitution, against the respondent-company cannot be filed, as the enforcement of non-statutory rules cannot be made.

5. Since the issue involved in the matters is with regard to regularization of the service of the petitioners in the respondent-company and this Court has to see whether petitioners' services can be regularized in such circumstances as agitated by the petitioners' counsel based on the judgments rendered by the Supreme Court on the subject issue.

6. To address the aforesaid proposition, regularization of contractual employees requires a clear legal basis, a well-defined policy, and a fair assessment of the employee's performance and qualifications. Without these, employees cannot claim regularization of service. Reference in this regard may be made to the cases of Vice Chancellor Agriculture University, Peshawar v Muhammad Shafiq **2024 SCMR 527**, Federation of Pakistan through Secretary, Ministry of Law and Justice Islamabad and another v Fazal-e-Subhan and others **(PLS 2024 SC 515)**; Government of Khyber Pakhtunkhwa through Secretary Forest, Peshawar and others v Sher Aman and others **(2022 SCMR 406)**; and Messrs. State Oil Company Limited v Bakht Siddique and others **(2018 SCMR 1181)**.

7. The differences between a contractual employee and a regular employee are material for both the employee and the employer and, inter alia, include as:-

- (i) A contractual employee is usually employed for a specific period or task with a set end date.
- (ii) Contractual employees generally do not receive the same benefits or statutory protection as regular employees.
- (iii) The contractual employee is engaged for a specific project or task.
- (iv) The contractual employees often have more flexibility in terms of work hours and location.
- (v) A contractual employee can be less costly in the short term as it does not require benefits and other long-term financial commitments, and
- (vi) Hiring regular employees is often a long-term commitment, so organizations opt for contractual workers to manage risks associated with fluctuating market demands.

8. The Supreme Court has held that there is no automatic right to regularization for contractual employees unless it is supported by law or policy.

Regularization without legal backing violates principles of fairness, transparency, stating that discrimination requires a legal basis for the initial benefit, which is absent in this case. Therefore, regularization cannot occur without legal support and a transparent, merit-based process. Besides, in the petitioners' case the contract does not suggest the regularization of service and in absence of such commitment this Court under Article 199 of the Constitution cannot enforce contractual obligation by directing the respondent-company to regularize the services of its employees.

9. The Supreme Court also emphasizes that regularization is a policy decision within the executive's purview and generally beyond judicial interference. Courts can review policies only if they violate constitutional rights. The concept of institutional autonomy, essential for effective decision-making, supports non-interference in policy matters. This autonomy is vital for public institutions to safeguard public interest and promote democratic values, including academic freedom.

10. This Court has determined that The petitioners cannot ask for regularization of their service through constitutional petitions under Article 199 of the Constitution, however, it is for the respondent's competent authority to consider their case in terms of their policy, if any, without discrimination within reasonable time.

11. In view of the above facts and circumstances of the case, the petitioners failed to make out their case for enforcement of the service rules of the respondent-company under Article 199 of the Constitution of the Islamic Republic of Pakistan, therefore, these petitions are held not maintainable to the extent of regularization of the services of the petitioners and are dismissed with pending application(s) accordingly.

JUDGE

HEAD OF CONST. BENCHES