

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

**C.P No.D-687 of 2023**

*[Arif Manzoor vs. Federation of Pakistan and 02 others]*

**Before:**

**Justice Arbab Ali Hakro, J**

**Justice Riazat Ali Sahar, J**

Petitioner by : Mr. Ayatullah Khuwaja Advocate

Respondents by : Mr. Muhammad Arshad S. Pathan, Advocate  
Mr. Ghulam Abbas Sangi, Assistant  
Attorney General of Pakistan

Date of hearing : **02.5.2025**

Date of decision : **16.05.2025**

## **J U D G M E N T**

**ARBAB ALI HAKRO, J:** This Constitutional Petition, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (“the **Constitution**”), is filed by the petitioner, seeking the following reliefs: -

- a) *To declare that act of Respondents not treating petitioner at par and not issuing letter of regularization to the petitioner unlawful and unjustified.*
- b) *To declare that the petitioner is entitled for regularization of service at par and equal treatment along with back benefits.*
- c) *To issue writ of Mandamus directing the Respondents to consider the matter of petitioner and regularize his service on respective post likewise regularized other employees in the same Department from the date of appointment.*
- d) *That respondents any be directed not to take any coercive/punitive action against the petitioner during pendency of this constitutional petition.*
- e) *To grant any other equitable and appropriate relief to the petitioner in the circumstances of the case.*

2. The brief facts leading to the filing of this petition are that the petitioner was appointed as Assistant Manager (MM)/Store in Hyderabad Electric Supply Company (HESCO), Hyderabad, in 2016 after fulfilling all legal formalities and successfully passing the recruitment process. However, he was barred from assuming duties on the pretext of medical certification. This action was challenged before this Court through C.P No.D-689 of 2016, whereupon the Court directed a medical re-evaluation at NICVD, Karachi. The petitioner was declared fit, and vide order dated 09.5.2019, this Court instructed the respondents to reconsider his

appointment. Despite these judicial directives, Respondent No.2 failed to comply, necessitating the filing of Contempt Application No.7071 of 2019. Following notice issuance, the petitioner was finally permitted to join service on 26.02.2020, yet was subjected to continued discrimination. Despite fulfilling the required tenure for regularization, his case was not presented before the Regularization Board, whereas similarly placed employees recruited in the same cycle were regularized. The HESCO Board, vide Resolution dated 22.6.2021, cleared the regularization of 551 daily-wage employees, while 22 surplus GENCO employees were also absorbed in service. However, the petitioner's case was arbitrarily referred to the PPMC despite HESCO's inherent regularization authority. Meanwhile, the Cabinet Secretariat issued an Office Memorandum dated 17.01.2023, urging the regularization of sacked, contractual, and daily-wage employees under relevant provisions. Despite constitutional guarantees of equality, the petitioner continues to face unjustified discrimination, deprived of his legitimate expectation of equal treatment akin to his batch-mates, in stark violation of his fundamental rights enshrined in the Constitution.

3. Upon issuance of notice, Respondents No.2 and 3 submitted their para-wise comments, wherein they categorically refuted the petitioner's claims and raised preliminary legal objections. It is asserted that the petitioner had failed to implead the Power Planning and Monitoring Company (PPMC), which exercises overarching authority over DISCOs, as a proper party to the proceedings. Furthermore, the respondents asserted that the petitioner was fully cognizant of the ban on regularization imposed by the Ministry of Energy (Power Division) across all DISCOs in Pakistan. They denied any allegation of discriminatory treatment and alleged that the petition was predicated upon extraneous considerations, solely intended to exert undue pressure on the management for regularization, which remains prohibited under ministerial directives.

4. At the outset, learned counsel for the petitioner contends that the petitioner is a contractual employee, not a regular employee; therefore, the instant petition is maintainable before this Court. He further argues that the petitioner was appointed and duly joined service on 26.02.2020, completing his one-year contractual period on 26.02.2021. However, the ban on regularization imposed by the Ministry of Energy (Power Division), vide letter dated 22.11.2021, pertains exclusively to employees engaged on contingent/daily wages/contractual basis in DISCOs. Since the ban was introduced after the petitioner had already completed his contractual period,

it does not have retrospective effect and, thus, cannot be used to deny the petitioner his lawful right to regularization. He further contends that despite rendering satisfactory service, the petitioner's case was not placed before the Regularization Board, whereas similarly placed employees recruited in the same cycle were regularized. In contrast, the HESCO Board, vide Resolution dated 22.06.2021, sanctioned the regularization of 551 daily-wage employees, while 22 surplus GENCO employees were absorbed into permanent service. However, the petitioner was arbitrarily excluded from this process, depriving him of his constitutionally guaranteed rights. Learned counsel also contends that the Cabinet Secretariat (Establishment Division), vide Office Memorandum dated 17.01.2023, explicitly recommended regularizing sacked, contractual, and daily-wage employees. Thus, the petitioner's claim is legally justified and falls within the federal government's policy directives, reinforcing his entitlement to regularization. Finally, learned counsel argues that the petitioner has been subjected to blatant discrimination despite fulfilling all requisite conditions for regularization. His batch-mates, appointed through the same advertisement and recruitment process, have already been regularized, whereas he continues to be denied equal treatment, in stark violation of his fundamental rights.

5. Conversely, learned counsel representing Respondents No.2 and 3 contends that the instant petition is not maintainable, as HESCO does not have statutory service rules. Accordingly, service-related disputes fall within the exclusive jurisdiction of the Federal Service Tribunal (FST). He argues that the petitioner has wrongly invoked the constitutional jurisdiction of this Court instead of approaching the appropriate forum designated for service matters. Counsel argues that the petitioner was fully aware of the regularization ban imposed by the Ministry of Energy (Power Division) across all DISCOs, vide letter dated 22.11.2021. He submits that regularization remains prohibited and that the petitioner cannot claim an exception when a blanket policy applies to all similarly situated employees. He further contends that there is no discrimination against the petitioner, as the ban applies across the board. Any claim that the petitioner has been treated unfairly is misplaced and factually incorrect, as all employees in a similar position are subjected to the same restrictions under ministerial directives. Finally, he concluded that the petition may be dismissed for being misconceived, not maintainable, and devoid of merit. He relied upon the case law reported as **2022 SCMR 991** and **SBLR 2024 Sindh 1729** to support his contentions.

6. Learned Assistant Attorney General of Pakistan has adopted the arguments of the learned counsel for respondents No.2 and 3.

7. We have meticulously examined the submissions of the learned counsel for the petitioner, the respondents, and the Assistant Attorney General and have scrupulously reviewed the record with their assistance.

8. In view of the competing contentions, we have to determine whether constitutional jurisdiction can be invoked in matters involving non-statutory service and whether the petitioner has an enforceable right to regularization. The Supreme Court of Pakistan, in a case of **Waqar Ahmed and others**<sup>1</sup>, unequivocally held:-

*"Time and again, it was held by this Court in numerous judgments that a writ does not lie under Article 199 of the Constitution against an organization having no statutory rules of service. Likewise, it was held numerously that for regularization of service of contractual employees, writ only lies if it is permissible under some law and policy decision across the board, provided that the said organization is amenable to the writ jurisdiction of the High Court under Article 199 of the Constitution. Even in the case of Faraz Ahmed v. Federation of Pakistan through Secretary, Ministry of Communications, Government of Pakistan (2022 SCMR 1680) (authored by one of us), it was specifically held that contractual employees have no vested right to regularization, but their regularization may be considered subject to their fitness, suitability and the applicable laws, rules, and regulations of the Department. They have no automatic right to be regularized unless the same has specifically been provided for in the law, and they must demonstrate statutory basis for such a claim, in the absence of which, relief cannot be granted..."*

[Emphasis is supplied]

9. This principle categorically bars constitutional jurisdiction against a non-statutory entity such as HESCO unless a specific statutory provision or policy directive permits regularization. In the instant case, the petitioner fails to identify any such statutory foundation, making his claim jurisdictionally untenable.

10. Further in a case of **Pakistan Electric Power Company**<sup>2</sup>, the Supreme Court of Pakistan solidifies the principle that:

*"In the case of an employee of a corporation where protection cannot be sought under any statutory instrument or enactment, the relationship between the employer and the employee is governed by the principle of 'master and servant,' and in such cases, the constitutional jurisdiction of the High Court under Article 199 of the Constitution cannot be invoked..."*

[Emphasis is supplied]

<sup>1</sup> Waqar Ahmed and others vs. the Federation of Pakistan through Cabinet Secretariat, Establishment Division, Islamabad and others (2024 SCMR 1877)

<sup>2</sup> Pakistan Electric Power Company vs. Syed Salahuddin and others (2022 SCMR 991)

11. The above doctrine precludes intervention in service disputes of non-statutory entities, reinforcing the respondents' contention that the petitioner's relationship with HESCO is purely contractual, thereby falling outside the purview of constitutional jurisdiction. The petitioner's employment order dated 24.3.2016 (available on Page No.19 of the Court file) explicitly negates any future claim to regular absorption, as stipulated in term and condition "C"<sup>3</sup>. This contractual stipulation nullifies automatic regularization entitlement, restricting the petitioner's recourse to merit-based competitive selection. Since contractual obligations are binding, the petitioner's reliance on the regularization of other employees does not override his express waiver of any absorption claim under the employment terms.

12. Additionally, in a case of **Faraz Ahmed (2022 SCMR 1680)**, relied and discussed by the Supreme Court in case of **Waqar Ahmed and others** (supra), wherein Supreme Court categorically held that contractual employees must demonstrate a statutory basis for regularization, failing which, constitutional relief cannot be granted. Moreover, the Division Bench of this Court in a case of Dalan Khan Shar, while relying upon the case of **Pakistan Electric Power Company**<sup>4</sup> (supra), summarily dismissed a petition against HESCO, reinforcing the prevailing judicial stance that service disputes in non-statutory organizations do not fall within the purview of Article 199 of the Constitution.

13. After a meticulous juxtaposition of the facts of the case with authoritative judicial precedents, it is evident that HESCO does not operate under statutory service rules, thereby rendering the petitioner's grievance non-justiciable under Article 199 of the Constitution. The master and servant doctrine governs the employment framework of non-statutory entities, thereby foreclosing any invocation of constitutional jurisdiction in service-related disputes. Moreover, the ban on regularization imposed on 22.11.2021 came into effect after the petitioner had completed his contractual tenure on 26.02.2021, thereby negating any retrospective applicability of the prohibition. However, even assuming arguendo that the ban could apply retrospectively, the petitioner would nevertheless be unable to assert a legally cognizable right to regularization without a statutory foundation explicitly providing for such entitlement. Additionally, the contention that similarly placed employees have been regularized does not,

---

<sup>3</sup> "The contract employee shall have no right later-on to claim for regular absorption nor it will be liability of the Company. However, he will be allowed to apply and compete against the advertised post subject to the terms and conditions of the post."

<sup>4</sup> Dalan Khan Shar vs. Federation of Pakistan and others (SBLR 2024 Sindh 1729)

*per se*, constitute a judicially enforceable right to regularization, as mere administrative discretion cannot override established legal principles governing contractual service. The petitioner's employment order explicitly negates any automatic entitlement to absorption, rendering his claim contractually untenable. While other employees may have been regularized, the petitioner's contractual agreement expressly precludes the enforcement of such a practice as a vested entitlement, thus reinforcing the absence of any substantive right in his favour. Accordingly, in light of the foregoing discussion, the petitioner's claim, both jurisdictionally and contractually, is devoid of legal merit and does not warrant judicial intervention under constitutional jurisdiction.

14. For the foregoing reasons, it is manifest that the instant petition is not maintainable; hence, the same stands **dismissed**.

**J U D G E**

**J U D G E**

Sajjad Ali Jessar