

IN HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

CP No. D-798 of 2024

PRESENT:

MR. JUSTICE ARBAB ALI HAKRO

MR. JUSTICE RIAZAT ALI SAHAR

Petitioner : Safiyan through Mr. Farhan Ahmed
Bozdar, Advocate.

Respondents: Through Mr. Muhammad Sharif
Solangi, A.A.G. Sindh along with Mr.
Muhammad Iqbal Kumbhar, Director
School Education Elementary,
Secondary and Higher Secondary
Mirpurkhas.

Date of Hearing : 16.04.2025

Date of Decision : 21.05.2025

JUDGMENT

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

- i. To set aside the office orders dated 01.08.2023 and 01.11.2021 issued by respondents No.1 and 2 is illegal, without any lawful authority.*
- ii. To order the regularization of service of petitioner from his date of his initial appointment i.e. 16.01.2010.*
- iii. Direct the respondents to grant Time Scale Promotion to petitioner from 27.01.2023 from BPS-16 to BPS-17 as per notification dated 07.06.2010 issued by Finance Department government of Sindh..*
- iv. Any other relief which this Honourable Court deems fit and proper.*

2. The petitioner was initially appointed as a Junior School Teacher (JST) in BPS-14 on a contract basis for three years with effect from 16.01.2010 by the Executive District Officer Education, Mirpurkhas. In 2012, the respondents advertised vacancies for the post of High School Teacher (HST) in BPS-16, for which the petitioner applied through proper channel after obtaining departmental permission dated 25.05.2012 and fulfilling all codal formalities. He was selected and appointed as HST (BPS-15) on 25.09.2013. As a serving government employee, the petitioner also applied for pay protection. The petitioner while referring order dated 25.11.2020 passed by this Court Bench at Sukkur stated that the posts of JST and HST are permanent and should be regularized from the initial date of appointment, he states that his service ought to have been regularized accordingly. On 31.01.2012, the Government of Sindh enacted the Sindh Regularization of Teachers Appointed on Contractual Basis Ordinance, 2012, under which the petitioner was regularized. He has continued to perform his duties diligently without any complaint or disciplinary action. On 01.11.2021, the Additional Secretary (Law) confirmed his regularization from 16.01.2013 under the Teachers Appointed on Contract Basis Act, 2018. Later, on 22.09.2022, the Director School Education, Mirpurkhas, ordered that his previous service as JST be counted for pension and leave benefits. Subsequently, the petitioner submitted a representation on 26.09.2022 seeking confirmation of regularization from his initial appointment date i.e., 16.01.2010 and on 09.06.2023, respondent No.2 directed respondent No.3 to regularize the petitioner's service from 16.01.2013 with pay protection and counting of previous service. However, on 01.08.2023, respondent No.1, without lawful authority, issued a letter declaring the regularization infructuous. The Director Education again, on 18.10.2023,

reiterated the request for service continuation and pay protection, but no response was received. The petitioner stated that the Finance Department has been harassing non-influential employees without cause and due to its illegal conduct, he has been denied his time-scale promotion to BPS-17, which is due since 27.01.2023, resulting in a monthly financial loss of Rs.10,000/-. The petitioner has stated that other similarly placed employees have been regularized from the date of initial appointment, but he has been subjected to discriminatory treatment by respondent No.3, hence this petition.

3. Pursuant to the Court's notice, respondent No.2 files comments on his behalf as well as on behalf of respondent No.1. Comments of respondent No.3 have also been filed. In their comments, respondents have admitted the appointment of the petitioner as stated in his petition. The service of the petitioner and others who were appointed as HST after the suitability assessed by the NTS were regularized under the Regularization Act, 2018 with effect from 18th April, 2018. No matter, the petitioner was appointed as Primary School Teacher on regular basis but by seeing the higher grade incentives, he opted for appointment as JST on contract basis and again as HST that too on contract basis, therefore, his earlier appointment no matter was regularization. His seniority in the post of HST, BS-15 will, therefore, be counted from the date of his regularization. In this regard the reliance is made on the order dated 16.12.2020 passed in C.P. No.D-2666 of 2020 "Saeed Habib v. National Bank of Pakistan". As far as regularization under "Sindh Regularization of Teachers Appointed on Contractual Basis Ordinance, 2012" is concerned, the services of the contract appointees were regularized with immediate effect, hence, there is no provision to claim the alleged regularization from the retrospective date. They further stated that the service

of petitioner is regularized from date of its regularization there is no provision of regularization of service from the date of initial appointment. As regards the claim of the petitioner is concerned, the service of petitioner is regularized with effect from 18.04.2018 vide notification No.1958 dated 14.01.2019 in which the name of petitioner stand at serial NO.4, and the minimum length of service for BPS-17 is 09 years' service as HST BPS-16 hence the petitioner is not entitled for the time scale BPS-17.

4. Learned counsel for the petitioner argued that the petitioner was initially appointed as a Junior School Teacher (JST) in BPS-14 on contract basis effective from 16.01.2010 and was later appointed as High School Teacher (HST) in BPS-15 through proper channel after obtaining departmental permission and completing all codal formalities. He has argued that the petitioner was regularized under the Sindh Regularization of Teachers Appointed on Contractual Basis Ordinance, 2012, and has served continuously without any adverse remarks. Learned counsel contended that the petitioner is entitled to regularization from the date of his initial appointment i.e. 16.01.2010 since he was appointed on a sanctioned post through a transparent process. He relied on a number of judgments including the order dated 25.11.2020 passed in C.P. No.D-1239 of 2009 and argued that several other teachers across Sindh have been regularized from their initial dates of appointment and the petitioner cannot be treated differently. Counsel further argued that pay protection under Rule 41 (a) (i) of the Sindh Civil Services Rules Vol-I and Finance Department Circular dated 16.06.1987 must be granted, especially since similarly placed persons, such as Ghulam Mustafa Shaikh, have been allowed the same. The learned counsel emphasized that denial of time-scale promotion despite fulfilling qualifying service is discriminatory and

unjustified. He prayed that the petition may be allowed as prayed.

5. Learned Additional Advocate General Sindh opposed the petition and argued that the petitioner's regularization has already been made in accordance with the Teachers Appointed on Contract Basis (Regularization) Act, 2018, effective from 18.04.2018, and therefore, he cannot claim retrospective regularization. He maintained that the Ordinance of 2012 provided for immediate effect of regularization, but did not authorize **retrospective benefits** or regularization from the date of initial appointment. It was further argued that the petitioner opted for HST from JST and thus, service from JST cannot be counted for seniority in the HST cadre. As for the time scale promotion to BPS-17, the learned A.A.G. argued that as per the policy, a minimum of 9 years of service in BPS-16 is required, which the petitioner does not fulfill. Reference was made to the judgment in C.P. No.D-2666 of 2020; however, the AAG acknowledged that each case turns on its own facts.

6. We have heard learned counsel for the petitioner, learned A.A.G. for the respondents and examined the record and the relevant laws, including the *Sindh Regularization of Teachers Appointed on Contractual Basis Ordinance, 2012* and the *Teachers Appointed on Contract Basis (Regularization) Act, 2018*.

7. As per the available record and submissions of the parties, it is admitted that the petitioner was initially appointed as Junior School Teacher (**JST**) in **BPS-14 on contract basis** with effect from 16.01.2010 under a sanctioned vacancy and later applied through proper channel for the post of High School Teacher (HST) in BPS-15, for which he was appointed afresh on 25.09.2013. His appointment as **HST was also on contractual basis** after qualifying the National Testing Service (NTS)

assessment and fulfilling all codal formalities. The crucial point for consideration is whether the petitioner is entitled to regularization of service from the date of his initial contractual appointment in 2010, despite entering new appointments on different posts through separate selection processes and whether such regularization can carry **retrospective** effect or entitle him to seniority and benefits accruing from an earlier period of contract service.

8. The contention of the petitioner that his service should be regularized from 16.01.2010 under the Sindh Regularization of Teachers Appointed on Contractual Basis Ordinance, 2012, is misconceived. The Ordinance provided that services of contract employees appointed against sanctioned posts would be regularized with immediate effect and prospectively not retrospectively. There is no provision in the Ordinance nor in the subsequent Regularization Act, 2013 or the Teachers Appointed on Contract Basis (Regularization) Act, 2018, that authorizes the retrospective regularization of service or backdating of seniority or other consequential benefits to the date of initial appointment. In fact, it is settled law that regularization is not a vested right and must be governed by statute and rules in force at the relevant time.

9. Furthermore, the nature of petitioner's appointments and their status are distinct and cannot be treated as continuous service for purposes of regularization from an earlier date. Admittedly, the petitioner, while serving as JST on contract basis, chose to compete afresh for the higher post of HST through NTS and was selected and appointed in a separate process. This amounts to a break in the continuity of employment for the purposes of counting seniority or service from the original date of JST appointment. It is a well-established principle that selection to a different post through a

fresh recruitment process, even within the same department, amounts to a new appointment. Therefore, his tenure as JST cannot be counted towards his service as HST for regularization, seniority, **or time-scale promotion benefits**. The contractual appointments do not confer any right unless continued without break and regularized under a clear statutory mandate.

10. So far the petitioner relied on other cases where regularization from the initial appointment date was granted, suffice to say that those cases involved teachers who were working continuously on the same post and were not reappointed through fresh competitive processes. The petitioner here did not remain on a single post; rather, he left the JST post and joined a different post as HST through a new recruitment process, which obviously is breaking the continuity. Moreover, the comparison with the case of Ghulam Mustafa Shaikh is inapplicable as no material or order has been placed on record to demonstrate that the factual matrix in that case was identical to the present one. Courts have consistently held that discrimination can only be alleged where the facts and circumstances are indistinguishable, which is not the case here. Mere reference to other allegedly favorable cases without establishing parity is insufficient.

11. The argument regarding pay protection under Rule 41 (a) (i) of the Sindh Civil Services Rules Vol-I and the Finance Department Circular dated 16.06.1987 also lacks merit. Pay protection is granted when a civil servant is transferred or appointed without break from one post to another under the same administrative control or scale equivalence. In the instant case, the petitioner voluntarily sought appointment on a higher post through a separate selection mechanism and entered into a new contractual engagement, as such, Rule 41 (a) (i) is

inapplicable. The administrative decisions regarding pay protection and service counting under such circumstances have been clarified in various Finance Department circulars and do not entitle employees to claim continuity from a post they voluntarily vacated for another post.

12. As regards the claim for **time-scale promotion** to BPS-17, it is governed by the Finance Department's Notification dated 07.06.2010 and related policies, which clearly stipulate a minimum of nine years of regular service in BPS-16 (or equivalent) as a precondition for time-scale promotion. The petitioner was regularized under the Teachers Regularization Act, 2018 with effect from 18.04.2018, and thus as of 27.01.2023, he has not completed the required nine years of regular service in BPS-16 or above. His service in HST prior to regularization was purely contractual and hence cannot be counted for time-scale promotion purposes. The courts have held that such benefits accrue only from the date of regularization, not from the date of initial contractual appointment.

13. It is also significant that the Finance Department and the Education Department have issued clear directions in various correspondences, denying the petitioner's claim on valid and lawful grounds. The petitioner's allegation of harassment and discriminatory treatment is unsupported by substantial material. The record shows that the respondents considered the petitioner's case multiple times and passed well-reasoned orders based on applicable service rules and regularization laws. The letter dated 01.08.2023, declaring earlier pay protection regularization infructuous, was within lawful authority, as administrative corrections are permissible where an earlier order is found contrary to law or policy.

14. In view of what has been discussed above, we find no merit in the contentions of the petitioner and the case of

petitioner has been duly considered under the prevailing legal framework and applicable policies. The claim for retrospective regularization, pay protection from the date of initial appointment and **time-scale promotion** without fulfilling the eligibility conditions is untenable and legally misconceived. No arbitrariness or violation of rights has been established. Accordingly, the petition being meritless is **dismissed** along with all pending applications, if any.

JUDGE

JUDGE

Abdullahchanna/PS