

THE HIGH COURT OF SINDH, KARACHI

Before:

Justice Mohammad Karim Khan Agha

Justice Adnan-ul-Karim Memon

CP No D-7448 of 2019

[Mansoor Umar Khanzada & others v. Province of Sindh and others]

Petitioners : through Barrister Mohsin Shahwani
advocate

Respondent No.2 : through Malik Altaf Jawed
Advocate

Respondents No.1,3,4,5 and 6: through Mr. Ali Safdar Depar, Assistant
Advocate General

Dates of hearing : 07-05-2025

Date of order : 07-05-2025

ORDER

Adnan-ul-Karim Memon, J. The Petitioners are asking the Court to order the Respondents to fully implement the Regularization Order of February 28, 2017 issued by Sindh Irrigation and Drainage Authority (SIDA), ensuring they receive all benefits due to regular Sindh government employees. They also request the Court to direct Respondent No. 2 to treat them equally with other permanent government employees and take the necessary actions to provide these service benefits as they received. Additionally, they seek an order compelling the Respondents to grant all regular employee benefits, including creating required positions, assigning identification numbers, and providing financial and career-related benefits, in accordance with prior decisions and the Regularization Order. Finally, they request the Court to direct the Respondents to determine their seniority from their initial hiring date and grant them due promotions and seniority, and to direct Respondent No. 5 to act on previous communications to create necessary budgetary allocated posts for the employees of SIDA.

2. A group of Sindh Irrigation and Drainage Authority (SIDA) employees, who worked on the Water Sector Improvement Project (WSIP), are asking the court to grant them the same benefits as other permanent Sindh government workers. This comes even after a previous court order directed that they should be made permanent. These employees were hired by SIDA between 2009 and 2012 through a proper hiring process, and many had already worked on a related project since 2004. Both WSIP's steering committee and SIDA's board recognized the need to secure these employees' salaries through the regular government budget. However, SIDA's requests to create permanent positions for them were

mostly turned down by the Finance Department for unknown reasons. The employees had previously filed a court petition (CP D-5100 of 2013), which resulted in a court order on June 1, 2016, requiring the authorities to make them permanent within 90 days. Following this, SIDA's Managing Director sought and received approval for their regularization. They were then made permanent on February 28, 2017, with an order stating they would receive all the benefits of regular Sindh government employees starting from July 1, 2016. Despite this, these employees are being denied benefits like gratuity, promotion, seniority, pension, and the GP Fund, which other permanent employees received. They pointed out that even some of their colleagues within the same project who were made permanent earlier were/are receiving these benefits.

3. The petitioners' counsel argued that the denial of service benefits as admissible to the regular employees of the government of Sindh under the applicable law, is against the Article 25 and 27 of the Constitution, despite a 2016 court order for regularization of the service of the petitioners with full Sindh government employee benefits and a subsequent 2017 regularization order dated 28.02.2017, is unfair, violates their fundamental rights, and disregards the prior court directive. He emphasized that similarly situated employees within the same project have received full benefits. The counsel highlighted the petitioners' legitimate expectation of equal treatment under Article 25 of the Constitution, arguing that the discriminatory denial of benefits like insurance, GP Fund, pension, and promotions breaches principles of natural justice, equity, and constitutes contempt of court. Citing superior court judgments on legitimate expectation and equal treatment (including 2019 PLC (CS)N 38 Kar., **2019 PLD SC 218**, and **2019 PLC(CS) 238 Karachi**), the counsel contended that the respondents' actions create uncertainty and deprivation, violating constitutional Articles and relevant ordinances. He requested the court to enforce the regularization order fully, grant all regular employee benefits, determine seniority for promotions, and mandate the creation of necessary budgetary posts for petitioners. He prayed for allowing the petition.

4. The Assistant Advocate General (AAG) argued that the relationship between SIDA and these former WSIP employees is based on "master and servant" principles because their employment terms are "non-statutory." According to the AAG, this makes their current petition inadmissible under the law. The AAG suggested that the employees should instead pursue the implementation of the previous regularization order through their earlier petition (CPD No. 5100/2013). The AAG maintained that the authorities in the Government of Sindh are treating the employees according to the law and denied any discrimination. He stated that petitioners have contacted the relevant

departments to arrange for the online issuance of salaries, pensions, and gratuity for these employees if admissible under the law. The AAG also argued that these former WSIP employees are not in the same situation as officers from the Irrigation Department who are working at SIDA on deputation or transfer. Furthermore, the AAG explained that the regularization of some project employees from the Planning & Development Department occurred under a different law (the 2013 Act). He also contended that the employees' own appeals to SIDA do not create any legal obligation on the authority of the government of Sindh. The AAG suggested that the employees have other legal avenues available to them under Section 9 of the Code of Civil Procedure 1908. Finally, the AAG assured the court that any order if issues will be followed.

5. We have heard the learned counsel for the parties and perused the record with their assistance.

6. The question for our determination is whether contract employees of the Sindh Irrigation and Drainage Authority (SIDA) regularized under the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, can be fully equated with civil servants governed by the Sindh Civil Servants Act, 1973.

7. The SIDA was established under SIDA Act 1997. Thereafter the Act was repealed with Sindh Water Management Ordinance 2002 and promulgated to improve water management in Sindh and to manage the transition process to promote the formation, growth development of SIDA, area of water board and former organization, however their employees have not been declared civil servant as they are still employees of the authority as discussed supra. So far as the service benefits of the petitioners are concerned SIDA is the competent authority to make arrangement with the Government of Sindh and it is for them to take decision whether petitioners are entitled to all other benefits etc. as admissible to regular employees of Government of Sindh under the applicable laws.

8. The Sindh Regularization Act of 2013 aimed to grant regular status to eligible ad-hoc and contract employees (excluding daily-wage and work-charged staff), deeming their appointment valid from just before the Act's commencement. While this Act confers "regular" status, it does not automatically place these employees entirely under the Sindh Civil Servants Act of 1973 from their initial contract date. Civil servants are governed by comprehensive rules covering various aspects of service. Regularized contract employees typically fall under these rules from their regularization date, but their prior service treatment can vary. Regular civil servants receive benefits like pensions and promotions, often detailed in the regularization order for contract employees, specifying effective dates which may not be retroactive. Seniority for regular civil servants follows

specific rules, while for regularized contract employees, it is usually counted from their regularization date. Pension eligibility and calculation for the latter depend on the regularization terms and pension rules, determining if past contract service counts. Disciplinary rules for civil servants apply to regularized employees post-regularization. Civil servants can appeal to the Sindh Service Tribunal regarding service terms. However, while regularized employees might fall under this jurisdiction for post-regularization matters if classified as civil servants, however SIDA employees are noted as *not* being civil servants as they are treated employees of the authority even after regularization of their service for which the SIDA received chunk of amount from the Government of Sindh to pay service benefits to their employees. Therefore, while the 2013 Act provides regular status, complete alignment with civil servants under the 1973 Act is not automatic. It hinges on the specifics of the regularization order..

9. The current legal issues emphasize that achieving equal benefits and seniority for these regularized employees of SIDA requires clear administrative decisions. While the Act 2013 facilitated their regularization only, fully integrating them into the civil service structure, particularly given SIDA employees' unique position, necessitates further clarification and implementation. The purpose of this petition is to determine whether SIDA employees can be treated equally with other government employees regarding service benefits and the budgetary allocation for their positions.

10. Therefore, this petition is disposed of with the direction to the Chief Secretary Sindh to convene a meeting coordinated by the Head of SIDA and Irrigation department Government of Sindh, within three months to address this discrepancy and resolve the subject issue at their end on administrative side.

JUDGE

HEAD OF CONST. BENCHES