ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D-4903 of 2020
(Shabbir Ahmed & others versus Federation of Pakistan & others)

Date	Order with signature of Judge

Before:-
Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Zulfiqar Ali Sangi

Date of hearing and order: 29.4.2026

Mr. Ali Asadullah Bullo advocate for the petitioners
Mr. Khaleeq Ahmed, DAG alongwith
Mr. Muhammad Akbar Khan, Assistant Attorney General
Mr. Khalid Mahmood Siddiqui advocate for respondents No.2 and 3

O R D E R

Adnan-ul-Karim Memon, J. Petitioners have filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking the following relief: -

> ***i.*** ***Declare the impugned Office Orders dated 19.03.2015, 23.12.2015, and 04.05.2015 as violative of the Constitution of the Islamic Republic of Pakistan, 1973, in contradiction to the dicta laid down by the Hon'ble Supreme Court of Pakistan, and set aside the same.***
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> ***ii.*** ***Direct the Respondents to count past service of the Petitioner from 1992 till 2012 towards calculation of pension and pensionary benefits and release the same from 11.05.2016, 03.02.2017, and 30.06.2016, the date of superannuation alongwith interest.***
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> ***iii.*** ***Restrain the Respondents, their agents, employees, or anybody acting on their behalf from taking any adverse/coercive action against the Petitioner.***

2. The case of the petitioners is that they were initially engaged as daily wage laborers during the years 1998, 1999, and 2001 through a third-party contractor providing services to the Civil Aviation Authority (CAA). Despite their contractual engagement, they continuously worked under the direct supervision and control of the CAA, as reflected in their service and identity records. Their services remained satisfactory, and they served diligently for several years. In 2009, pursuant to the recommendations of the Cabinet Sub-Committee, their services were regularized with retrospective effect from 01.06.2009. Initially placed in PG-1, they were later upgraded to PG-4. The petitioners continued to perform their duties with dedication until attaining the age of superannuation between 2016 and 2017. However, upon retirement, the petitioners were denied pension and allied benefits, as the respondents refused to count their prior service rendered on a daily wage basis. Aggrieved, the petitioners challenged the impugned office orders, asserting that such exclusion of past service is contrary to settled law laid down by the Hon’ble Supreme Court of Pakistan, which

recognizes temporary and contingent service as qualifying service for pension if followed by regularization.

3. Learned counsel for the petitioners contended that the controversy is no longer res integra, as this Court in Constitution Petition No. D-3478/2018 vide judgment dated 02.03.2020 has already held that a constitutional petition is maintainable under Article 199 of the Constitution even in cases governed by non-statutory service rules where actions of a public authority are violative of applicable regulations. He submitted that the Court in the said judgment categorically held that, under CAA Service Regulations, 2014, read with Civil Service Regulations, continuous service rendered on a temporary or daily wage basis, if followed by regularization, must be counted towards qualifying service for pension. It was argued that a pension is a right dependent upon qualifying service, and Regulation 34 of the CAA Pay and Pension Regulations, 2014, clearly provides that service commencing even in a temporary capacity shall count, provided it is followed by substantive appointment without interruption. Learned counsel further submitted that this principle is reinforced by Fundamental Rule 22-A and Article 371-A of the Civil Service Regulations, which mandate that continuous temporary service, particularly exceeding five years or followed by confirmation, is to be counted for pensionary benefits. Applying these principles, he contended that the petitioners, who were initially appointed on daily wages between 1998 and 2001 and later regularized, have rendered sufficient qualifying service when their entire tenure is considered. Their past service, therefore, is legally countable towards pension and other retirement benefits. Reliance was also placed on various judgments of the Supreme Court affirming that past service cannot be excluded from pension once it is continuous and followed by regularization. Learned counsel further argued that the objection of the respondents regarding non-applicability of Civil Service Regulations to CAA employees is misconceived, as the CAA Regulations themselves adopt federal government rules relating to pension and retirement benefits on a mutatis mutandis basis. In conclusion, it was prayed that the petition be allowed and the respondents be directed to include the petitioners' daily wage service as part of their substantive service for pension and other allied benefits, and to settle all dues within sixty days.

4. Learned counsel for the respondent–CAA, controverting the submissions advanced on behalf of the petitioners, argued that the petition is not maintainable under Article 199 of the Constitution as the relationship between the parties is that of master and servant, governed by non-statutory service rules, and therefore does not warrant the invocation of constitutional jurisdiction. He contended that the reliance placed on the Constitution Petition No. D-3478/2018 is misplaced, as each case is to be decided on its own facts, and the said judgment does not lay

down an absolute rule applicable in all circumstances, particularly where employees have accepted specific terms and conditions of service. It was further submitted that the petitioners were admittedly engaged through a third-party contractor and not directly appointed by the CAA in accordance with the prescribed recruitment rules. Their initial engagement on daily wages was purely contingent, non-pensionable, and outside the regular establishment, thus creating no vested right to claim continuity of service for pensionary purposes. Learned counsel emphasized that upon regularization in 2009, the petitioners were inducted into service afresh under specific terms, which did not provide for counting of their prior daily wage service. Having accepted such terms without protest, the petitioners are now estopped from challenging the same. Learned counsel also argued that Regulation 34 of the CAA Pay and Pension Regulations, 2014, does not apply to the case of the petitioners in the manner suggested, as the said provision contemplates temporary service rendered against a sanctioned post within the framework of lawful appointment, whereas the petitioners' earlier engagement was neither against regular posts nor in accordance with prescribed procedures. He contended that the benefit of Fundamental Rule 22-A and Article 371-A of the Civil Service Regulations is also not available, as those provisions apply to civil servants appointed under the regular service structure, and not to individuals engaged through contractors or on a purely daily wage basis. Addressing the argument regarding the applicability of Civil Service Regulations, learned counsel maintained that although certain federal rules may apply mutatis mutandis, the CAA, being an autonomous body, retains the authority to regulate its employees' service conditions independently, and such application cannot override the explicit terms of regularization or the nature of initial engagement. On the issue of delay, it was contended that the petition suffers from gross laches, as the petitioners accepted their regularization in 2009 and only raised the present claim after retirement in 2016-2017, which disentitles them from discretionary relief under constitutional jurisdiction. Reliance was placed on various judgments of the Supreme Court to argue that stale claims, particularly in service matters, are not to be entertained. Learned counsel for the CAA further argued that the petitioners had accepted the terms of regularization, which excluded prior service from benefits. He relied upon the cases reported as 2025 SCMR 104, 2025 SCMR 443, 2024 SCMR 1877, 2024 SCMR 527, 2022 SCMR 566, 2022 SCMR 406, 2022 PLC(CS) 424 SC, 2022 PLC(CS) 85 SC, 2022 SCMR 897. In conclusion, learned counsel prayed that the petition be dismissed, as the petitioners have failed to establish any legal or vested right to have their prior daily wage service counted towards pension, and the impugned office orders were issued strictly in accordance with applicable rules and the terms governing their employment.

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

6. At the outset, the objection regarding maintainability cannot be sustained. It is now a settled proposition that even where service is regulated by non-statutory rules, a constitutional petition under Article 199 of the Constitution is maintainable if the action of a public authority is arbitrary, discriminatory, or violative of its own regulations. The Civil Aviation Authority, being a statutory body performing public functions, falls within the ambit of "public authority." The law laid down by the Hon'ble Supreme Court in *Muhammad Rafi* and *Pakistan Defence Housing Authority v. Lt. Col. Javed Ahmed* clearly affirms that constitutional jurisdiction can be invoked to enforce compliance with service regulations, even if non-statutory in nature. Thus, the plea of master-servant relationship does not bar constitutional review where illegality or denial of vested rights is alleged.

7. The objection of laches is equally misconceived. The denial of pension is not a one-time cause but a continuing wrong, as pension is a recurring right accruing month to month. Any illegality in its calculation or denial gives rise to a continuous cause of action. Therefore, the petition cannot be dismissed on the ground of delay, particularly when fundamental service rights are involved.

8. On merits, the core issue revolves around whether the petitioners' past service on a daily wage/contingent basis is liable to be counted towards qualifying service for pension. The answer is clearly in the affirmative. Regulation 34 of the CAA Employees Pay and Pension Regulations, 2014 unequivocally provides that qualifying service commences from the date an employee takes charge of a post, whether in a substantive or temporary capacity, provided such service is followed by regular appointment without interruption. This provision, read with Regulation 35, leaves no ambiguity that temporary, probationary, or officiating service is countable for pension.

9. Furthermore, by virtue of the CAA Regulations themselves, the Civil Service Regulations apply mutatis mutandis. Article 371-A of the Civil Service Regulations explicitly mandates that continuous temporary service, particularly exceeding five years or followed by confirmation, shall count towards pension. Similarly, Fundamental Rule 22-A protects prior service for purposes of fixation and pensionary benefits. These provisions collectively establish a statutory scheme that does not permit exclusion of continuous past service once it culminates in regularization.

10. The factual matrix of the case fully attracts the above legal provisions. The petitioners were initially engaged between 1998 and 2001, continuously served the respondent-Authority, and were subsequently regularized in 2009 without any break in service. Their service, therefore, satisfies the essential requirement of continuity followed by regular appointment. The contention of the respondents

that past service stands excluded by the terms of regularization cannot override statutory protections; any such condition, being contrary to law and settled principles, is unenforceable.

11. The precedents relied upon by the respondents are distinguishable, as they pertain either to pure master-servant disputes or situations where service was neither continuous nor followed by lawful regularization. In contrast, the present case is governed by specific service regulations and binding precedents of the Supreme Court, which consistently hold that once an employee's service is regularized, prior continuous service cannot be ignored for pensionary purposes.

12. Conversely, the petitioners' case finds direct support from authoritative pronouncements wherein it has been held that pension is a vested right linked with the entire length of qualifying service, and any arbitrary exclusion thereof is unlawful. The judgment of this Court in Constitution Petition No. D-3478/2018 further reinforces this position, having already settled the controversy vis-à-vis the same respondent-Authority.

13. In these circumstances, it is obvious that the impugned office orders, to the extent they exclude the petitioners' past service, are contrary to the governing regulations, Civil Service framework, and binding judicial precedents. Such exclusion amounts to arbitrary deprivation of lawful pensionary rights and cannot be sustained.

14. Accordingly, the petition merits acceptance, which is hereby disposed of along with pending application(s) in terms that the impugned office orders are set aside, and the competent authority of the respondents is directed to count the petitioners' entire continuous service, including the period served on daily wages, towards qualifying service for pension and allied benefits. The CAA/respondents shall recalculate and release all pensionary dues accordingly, preferably within a period of two months, along with all consequential benefits as admissible under law.

JUDGE

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