

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No. D-5064 of 2024

[Naseer Ahmed Chandio & others V. Federation of Pakistan and others]

Date	Order with signature of Judge(s)
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Before:

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Zulfiqar Ali Sangi

Date of hearing and Order: 04.05.2026

Mr. Kmran, Advocate for the Petitioners.

Mr. Ali Safdar Depar, A.A.G.

ORDER

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

- i) ***Declare the acts of the Respondents as illegal, discriminatory, exploitative mala fide and in violation of the law;***
- ii) ***Declare that order dated 05.06.2024, bearing reference No.PWDS/Admn/CP-4110/2024-116 is illegal, unlawful and unjust.***
- iii) ***Declare the Petitioners eligible to be regularized for the post of that they were appointed for by the Respondent No. 3 department and for all existing and prospective benefits associated with regularized employment;***
- iv) ***Declare that the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 is applicable to the Petitioners and therefore the protection granted therein shall be granted to the Petitioners as well;***
- v) ***Set aside the order dated 05.06.2024, bearing reference No. PWDS/Admn/CP-4110/2024-116 in perpetuity;***
- vi) ***Direct the Respondents No.2 and 3 to regularize the employment of the Petitioner from the date of their appointment;***
- vii) ***Restrain the Respondents, its agents or any persons acting on their behalf, from taking any coercive action against the Petitioners, inasmuch as terminating or suspending their employments with the Respondent No. 3;***
- viii) ***Cost of proceedings,***
- ix) ***Any other relief(s) this Hon'ble Court in the circumstances may deem fit and appropriate.***

2. Learned counsel for the petitioners contends that the petitioners were appointed through a lawful process in 2009-2010 under the Safe Mother Home Project and have continuously served for more than a decade, even after devolution following the 18th Amendment. It is argued that their long, uninterrupted service establishes that their appointments were not merely temporary but carry the attributes of regular employment. Counsel submits that the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, squarely

applies to the petitioners as they were contract employees, within BPS 1-18, duly qualified, and in service at the time of enactment for the reason that they have been working on a contract basis since their initial appointment. Therefore, they are deemed to have been regularized by operation of law. It is contended that the impugned order dated 05.06.2024 is illegal and mala fide, as it denies regularization solely on the ground that the petitioners were originally appointed by the Federal Government, despite their status as devolved employees protected under the Sindh Civil Servants (Devolved Employees) Rules, 2015. This distinction, according to counsel, is not recognized under the 2013 Act and is therefore arbitrary and discriminatory, especially when similarly placed employees have already been regularized. Counsel also submits that the impugned order is not a valid “speaking order” as directed by the Court, as it fails to address material facts, ignores eligibility, and relies on irrelevant considerations such as the non-availability of the record. The respondents’ failure to procure records from the Federal Government reflects administrative negligence and cannot prejudice the petitioners. It is lastly contended that the petitioners have been subjected to exploitation, and a legitimate expectation was created through repeated assurances of regularization. The impugned order, therefore, violates constitutional guarantees of equality and fair treatment.

3. Learned AAG supports the impugned order and submits that the petitioners were appointed on a contractual basis by the defunct Ministry of Population Welfare, Government of Pakistan, and their services were merely transferred to the Province after the 18th Amendment. Therefore, their status remains that of federal contractual employees. It is argued that the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, applies only to employees appointed by the Provincial Government and does not extend to employees devolved from the Federal Government. On this basis, the petitioners do not fall within the ambit of the said Act. Counsel further submits that due process was followed in compliance with the Court’s earlier order dated 28.02.2023. He submitted that a scrutiny committee was constituted, petitioners were heard in person, and a speaking order was passed after examining their cases. Therefore, no illegality or contempt has been committed. It is also contended that the essential recruitment record, including approval of the competent authority, selection process, and merit list, is unavailable, which casts doubt on the legality of initial appointments. Hence, regularization cannot be granted in the absence of a complete record. Lastly, learned AAG argues that the petition is not maintainable as the matter has already been decided pursuant to Court directions, and no vested right of regularization exists in favour of the petitioners.

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

5. The Population Welfare Department, Government of Sindh, issued the impugned order on 05.06.2024 during the pendency of Constitutional Petition No. 4110/2012. It was stated that the Scrutiny Committee No.1, constituted in compliance with the directions of this Court dated 28.02.2023, examined the cases of the petitioners working at Safe Mother Home, Larkana, in its meeting held on 22.02.2023. According to the findings of the Scrutiny Committee, the petitioners were initially appointed by the Federal Government through the then Ministry of Population Welfare, Islamabad, on a contractual basis, and their services were later transferred to the Province of Sindh after the 18th Constitutional Amendment vide letter dated 06.12.2010. It was further noted that out of 22 employees, 17 belonged to Safe Mother Home, Larkana, of whom 14 appeared before the Committee, while one was absent due to bereavement and two had resigned, though one later appeared subsequently. The Committee observed that appointment records were not available in the Provincial Department, as the employees were originally appointed by the Federal Government. It was further recorded that one driver possessed only a learner's license, whereas the remaining employees fulfilled the required qualifications for their respective posts. The performance of all employees was found satisfactory, and relevant personal and service details were compiled in the prescribed format. Pursuant to the judgment of this Court dated 28.02.2023, the petitioners had been directed to submit applications for regularization before the competent authority, which were to be decided through a speaking order within two months. In compliance thereof, a summary was placed before the worthy Chief Minister of Sindh on 02.06.2023, which considered the proposal for the regularization of contractual employees of devolved projects, including Safe Mother Home, Larkana. However, the competent authority, while referring to the provisions of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, and the service history of the petitioners, observed that the petitioners were appointed by the Federal Government and their services were transferred to the Province after devolution in 2011. It was therefore concluded that they do not fall within the ambit of the said Act. It was further noted that certain deficiencies were found in the recruitment record, including the absence of approval of the competent authority, selection committee proceedings, and complete recruitment documentation. On this basis, the department declined the recommendation for regularization. Accordingly, the Secretary, Population Welfare Department, issued the speaking order holding that since the petitioners were originally federal contractual employees whose services were later transferred to the Government of Sindh after the 18th Amendment, they are not covered under the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013.

6. The findings recorded in the impugned order dated 05.06.2024 are assailed by the counsel for the petitioners as being misconceived, legally untenable, and based on an incorrect appreciation of both facts and law. At the outset, it is urged that the mere fact that the petitioners were initially appointed by the then Federal Ministry of Population Welfare and later devolved to the Province of Sindh after the 18th Constitutional Amendment does not, in any manner, dilute or extinguish their accrued service rights. Upon devolution, the petitioners stood transferred along with their posts and continued uninterrupted service under the administrative control of the Government of Sindh. Their employment, therefore, acquired the character of provincial service for all legal and constitutional purposes. It is emphasized that the conclusion that the petitioners fall outside the ambit of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, is patently erroneous. The Act does not create a distinction between employees originally appointed by the Province and those devolved from the Federation, so long as they are serving in connection with the affairs of the Province at the relevant time. The essential requirements under Section 3 of the Act are admittedly fulfilled by the petitioners, namely: contractual appointment, possession of requisite qualifications, service in Government departments, and continuation in service at the time of the Act's enforcement. The restrictive interpretation adopted by the respondents is neither borne out by the statute nor supported by any judicial pronouncement. The reliance placed on the alleged "non-availability of recruitment record" is equally misconceived and legally unsustainable. The petitioners cannot be penalized for any administrative lapse or failure on the part of the respondents to preserve or obtain records from the Federal Government. It is a settled principle of law that administrative inefficiency or loss of record cannot prejudice the vested rights of employees who have rendered long, uninterrupted, and satisfactory service extending over more than a decade. Furthermore, the observation regarding the absence of approval of competent authority or selection committee proceedings is irrelevant at this belated stage, particularly when the petitioners have already served for 12–15 years, their appointments have never been challenged, and their performance has been consistently certified as satisfactory by the department itself. Any alleged irregularity at the time of initial appointment, if at all, stands cured by long continuation in service and subsequent administrative acceptance. It is also significant that the Scrutiny Committee itself acknowledged that the petitioners fulfill all required qualifications, their performance is satisfactory, and they have continuously served the department. Once these foundational facts are admitted, denial of regularization on purely technical or procedural grounds amounts to arbitrariness and defeats the very object of the 2013 Regularization Act. The respondents have further failed to appreciate that similarly placed employees, also devolved from the Federal Government, have been regularized by the Provincial Government. The selective denial of the same benefit to the petitioners constitutes

clear discrimination in violation of Article 25 of the Constitution. Lastly, it is submitted that the impugned order does not qualify as a “speaking order” in the true legal sense, as it fails to meaningfully address the petitioners’ legal entitlement under the 2013 Act, ignores material evidence of continuous service, and relies on irrelevant considerations while omitting relevant ones. It is thus a non-reasoned, arbitrary, and mala fide exercise of administrative authority, liable to be set aside.

7. The entire controversy revolves around the interpretation and applicability of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, to the petitioners, who were initially appointed by the Federal Government but later continued in service under the Government of Sindh after devolution following the 18th Constitutional Amendment.

8. In this regard, the Sindh Civil Servants (Devolved Employees) Rules, 2015, issued by the Government of Sindh under the Sindh Civil Servants (Amendment) Act, 2014, regulate the service structure of employees transferred to the Province following the Constitution (Eighteenth Amendment) Act, 2010. These rules apply to all devolved civil servants in Sindh, except those whose cases were sub judice at the time of enforcement, until such litigation is concluded. In essence, the Rules provide that all devolved employees shall be deemed appointed by transfer and integrated into the provincial service. Their seniority and promotion are to be determined based on the cadre in which they held a position before devolution, thereby preserving their existing service rights. The concept of a “fading cadre” is introduced, meaning no fresh recruitment shall be made against such posts, and vacant positions are to be absorbed into existing provincial cadres. Financially, the Rules ensure that the pay and benefits of devolved employees are not less favorable than those enjoyed before transfer. In matters not specifically covered, their service conditions are governed by the Sindh Civil Servants Act, 1973, and relevant rules. Additionally, departments are required to establish Anomaly Committees to address service-related discrepancies arising from devolution.

9. The respondents’ sole basis for denying regularization is that the petitioners were originally federal contractual employees and, therefore, allegedly fall outside the ambit of the 2013 Act. This reasoning, however, is not sustainable either in law or in principle.

10. The 18th Constitutional Amendment did not extinguish the employment rights of devolved employees; rather, it transferred institutions, functions, and employees to the provinces as a continuing arrangement. Once the petitioners were taken over by the Government of Sindh and allowed to serve continuously for more than a decade without interruption, their employment ceased to be a

“federal contractual arrangement” and effectively merged into provincial service in connection with the affairs of the Province.

11. The Sindh Regularization Act, 2013, is a beneficial piece of legislation intended to regularize all eligible employees working on an ad hoc or contract basis in government departments, provided they satisfy the statutory conditions. The Act does not distinguish between employees originally appointed by the Province and those who entered provincial service through devolution. The decisive factors under Section 3 of the Act are the existence of a contract/ad hoc appointment; Employment in a Government department/project; Possession of requisite qualifications; and Continuity in service at the time of commencement of the Act.

12. It is an admitted position that the petitioners satisfy all these requirements. Their long and uninterrupted service of more than 12-15 years, coupled with satisfactory performance, places them squarely within the protective umbrella of the Act. The attempt of the respondents to exclude the petitioners based on “federal origin” of appointment is a misreading of the law. Once the employees were absorbed/continued by the Province after devolution, the source of initial appointment loses legal significance. What matters is the status of employment at the time when the Act became operative and thereafter. The plea regarding “non-availability of record” is also legally irrelevant. It is a settled principle that an employee cannot be prejudiced due to administrative failure or loss of official record, particularly when long service, appointment orders, and departmental acknowledgment of performance/ including receiving salaries through public exchequers, are available. The burden of maintaining the recruitment record lies on the State, not on the employee. Similarly, alleged procedural irregularities at the time of initial appointment cannot defeat accrued rights after 12-15 years of continuous service, especially when the appointments were never challenged and have been accepted by the department throughout. Any such defect, if assumed, stands cured by long continuation, acquiescence, and legitimate expectation created by repeated assurances of regularization.

13. The Scrutiny Committee itself has admitted crucial facts in favour of the petitioners: continuous service since 2010, satisfactory performance, and possession of requisite qualifications. Once these facts are admitted, denial of regularization becomes arbitrary and discriminatory, particularly when similarly placed devolved employees have already been regularized by the Province. This selective treatment offends the principle of equality enshrined under Article 25 of the Constitution.

14. The impugned order also fails the legal test of a “speaking order” as it does not address the core statutory entitlement under the 2013 Act, and

subsequent Rules 2015, as discussed supra, ignores binding factual findings of the Scrutiny Committee, and relies on irrelevant considerations such as the origin of appointment and missing historical record.

15. In view of the above, it is held that the petitioners fall within the ambit of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013, and subsequent Rules 2015, their exclusion based on federal origin is misconceived and unlawful. Their long, continuous, and satisfactory service entitles them to consideration for regularization, which cannot be defeated by administrative lapses. Accordingly, the impugned order dated 05.06.2024 is arbitrary, discriminatory, non-speaking, and unsustainable in law, and is set aside to the extent of the petitioners.

16. Accordingly, the serving petitioners who lower grade persons, are entitled to regularization under the law with all consequential benefits from the date of their initial appointment, and the impugned order dated 05.06.2024 is set aside.

17. This petition, along with pending application(s), stands disposed of in the above terms.

JUDGE

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