ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS
C. P No.D- 230 of 2026
(Mst. Basheeran Vs. Province of Sindh and others)

BEFORE:

Mr. Justice Zulfiqar Ali Sangi

Mr. Justice Nisar Ahmed Bhanbhro

Petitioner: Through Mr. Sandeep Kumar Maheshwari, Advocate.

Respondents: Through Mr. Ghulamullah Memon, Addl. A.G

Date of hearing & Order: 11.11.2026

ORDER

NISAR AHMED BHANBHRO, J;- Petitioner Basheeran is widow of Atta Hussain Shoro who was civil servant and employed as chowkidar (BS-01) in Public Health Engineering Department. Atta Hussain died on 21.08.2024 while in service. On her husband's death Basheeran applied for grant of pensionary benefits, but her request was declined, therefore, she maintained Constitution Petition No D 634 of 2025 (Re-Mst. Basheeran V. Province of Sindh and others) before this Court. The Petition was disposed of on the report of District Accounts Officer who stated that the pension would be disbursed to the Petitioner, within shortest possible time. On disposal of the petition, the case of the Petitioner was referred to the department, wherein her request for grant of pension benefits was declined on the ground that Late Atta Hussain served in the department for a period of seven years therefore fell short of qualifying length of ten years service

manadatory for grant of pension benefits, hence, was constrained to maintain this Second Petition.

2. It is the case of the Petitioner that her late husband was appointed as Chowkidar in Public Health Engineering Department on contingency basis in year 1997 and continued to work in department on contingency paid staff until 2017, when his services were regularized with effect from 01.05.2017. Petitioner has maintained this petition soliciting that Respondents may be directed to include and calculate the period of service on contingent basis towards minimum length of qualifying service for pensionary benefits and grant her pensionary benefits admissible under the law.

3. On notices Respondent No 7 (Deputy Commissioner Mirpurkhas), wherein it is stated that a monthly grant of Rs. 2000 is provided to the petitioner through District Benevolent Fund Committee and an amount of Rs 30,645 has been disbursed to the Petitioner, through Cheque No 62566973 drawn on NBP Mirpurkhas Branh.

4. Respondent No 2 (Secretary Public Health Engineering Department), Respondent No 3 (Secretary Finance) and Respondent No 9, in their separate reply to the petition, have denied the claim of Petitioner for grant of pensionary benefits as her husband fell short of minimum qualifying length of service of 10 years. They asserted that service of Petitioner rendered on contingency basis was not countable towards qualifying length of service for pension, the qualifying length of service for the purpose of pension was the term of service on regular basis, however in appropriate cases the Chief Minister Sindh was competent authority to condone such period of service up to two years, hover such benefit was even not available to the Petitioner.

5. Mr Sandeep Kumar Maheshwari Learned Counsel for Petitioner contended that Petitioner's late husband rendered services as Chowkidar on contingent paid staff from year 1997 till 2017 without any break and his services were regularized on 01.05.2017. He contended that Petitioner's husband has served department for a period of more than 27 years cumulatively as contingent paid staff and regular employee, and qualified for the payment of pension benefits. He contended that petitioner being widow was entitled for pensionary benefits. He relied upon the case of **Secretary Ministry of Finance Islamabad and others V. Tayyaba Halim Subhani and others (2022 SCMR 77)**. He prayed for grant of petition.

6. Conversely Mr Ghulamullah Memon Learned Additional Advocate General Sindh has strongly opposed this petition, on the grounds that petitioner was not entitled for pensionary benefits as her late husband did not possess minimum 10 years' qualifying length of service as regular employee. He contended that period of service rendered by petitioner's husband on contingent basis was not countable towards his regular service, therefore she is not entitled for relief claimed. He prayed for dismissal of petition.

7. Heard Learned Counsel for the parties and perused material available on record.

8. On examination of record, it reveals that Petitioner's husband was appointed as Chowkidar in year 1997 on contingent paid staff and continued to work under the said scheme until 2017, when his service was regularized with effect from 01.05.2017. Petitioner's husband rendered services on contingent paid staff for a period of about 20 years and for seven years as regular employee. Petitioner's husband died while in service on 21.08.2024. **Moot point** involved in the instant petition is whether period of service rendered by Petitioner's husband

on contingent basis would be counted for grant of pensionary benefits under the peculiar circumstances or not?

9. Government has regulated grant of post-retirement benefits through subordinate legislation by framing West Pakistan Civil Service Pension Rules 1963 (Pension Rules). Rule 1.5 of Pension Rules envisages that these rules shall not apply to contingency, work charged and contract employees, the Rule reads as under:

> ***1.5. These Rules shall not apply to---***
>
> ***(i). Government Servants paid from contingencies, or borne on work charged Establishment,***
>
> ***(ii). Government Servants engaged on contract which contains no stipulation for pension under these rules***
>
> ***(iii). ... ...***

10. Rule 1.5 ibid excludes contract, contingency and work charged establishment employees from operation of Rules, dis-entitled them to claim pension irrespective of length of their service under temporary assignment. Under Rule 2.12 of Pension Rules, the qualifying length of service for pension was 25 years and administrative department was allowed to condone a deficiency of 6 months to bring the length of service within the bracket of 25 years. Government of Sindh vide notification dated 18th February 1977 introduced liberalized pension rules to bring pension laws in conformity with federal government. Rule 4(a) of the **Sindh Liberalized Pension Rules 1977** reduced the qualifying length of Service to 10 years; Rule 4(a) reads as under:

> ***4. (a) In the case of person who retires after completing 10 years service or more, a pensioner shall, subject to sub – para (b) and (c) below, be allowed to draw full gross***

pension, i.e one-fourth of the pension need not compulsory be paid in gratuity.

(b) If a pensioner so wishes, he may, at any time before the expiry of one month from the date of his retirement, ask for gratuity up to 25 per cent of his gross pension together with the remaining net amount of pension; the gratuity shall be paid at the existing rates.

(c) The existing provision for commutation of a further 25 per cent of the gross pension shall continue to be in force; the commutation shall be at the existing rates. Commutation shall, however not be subject to medical certification if it is asked for within one year of the date of retirement.

11. The above provision of Liberalized Pension Rules makes it abundantly clear that a civil servant shall be entitled to pensionary benefits, when he renders services for a period of 10 years on permanent basis. This minimum qualifying length of service could be relaxed in appropriate case, where employee served for a period of more than nine years, the authority may condone a remaining period up to six months to bring it to a complete service of 10 years qualifying length for grant of pensionary benefits.

12. Enabling provision of law which deal with counting of temporary service towards pensionary benefits are Civil Service Regulations (C.S.R.). Regulation 371 – A of C.S.R, provides that in certain conditions the service rendered on contract or contingency basis would be countable for calculation of pension benefits, Regulation 371- A of C.S.R. reads as under:

371-A. Notwithstanding anything contained in Articles 355(b), 361, 368, 370 and 371 of these Regulations, temporary and officiating service, in the case of Government

servants who retired on or after the 1st January, 1949, or who joined service thereafter, shall count for pension according to the following rule:-

(i) ***Government servants borne on temporary establishments who have rendered more than 5 years continuous temporary service shall count such service for the purpose of pension or gratuity excluding broken periods of temporary service, if any, rendered previously, and***

(ii) ***Continuous temporary and officiating service of less than five years immediately followed by confirmation shall also count for gratuity or pension, as the case may be."***

13. It is not disputed that Petitioner's husband rendered continuous service on contingent basis for more than Twenty years. However, the question that needs to be answered is whether such service would be counted in the minimum qualifying length of service or it would be an additional benefit towards pensionary benefits. Regulation 371-A of C.S.R. is a non-obstante clause to Regulations 355(b), 361, 368, 370 and 371 stipulated therein, this regulation by itself does not provide for entitlement to grant of pension but is restricted to the counting of period of a minimum of five years' service rendered on temporary basis once the services are taken on permanent basis, such period shall be counted for the purpose of calculation only, as an additional service to the requisite minimum period prescribed under the law. Literal meaning of Regulation 371-A makes it crystal clear that benefits of this regulation would be available to a civil servant who remained on temporary service for a period of more than five years. Regulation 371 – A of C.S.R. is in conformity with Rule 2.3 of the Pension Rules, which reads as under:

2.3 Temporary and Officiating Service:- Temporary and Officiating Service shall count for pension as indicated below:

(i) Government Servants borne on temporary establishment who have rendered more than 5 years continuous temporary service shall count such service for the purpose of pension or gratuity; and

(ii) temporary and officiating service followed by confirmation shall also count for pension or gratuity.

14. A Civil Servant can only lay claim for grant of pensionary benefits, when he or she fulfills three conditions of qualifying length of service for grant of pensionary benefits stipulated in Regulation 361 of CSR which reads as under:

"361. Except as otherwise provided in these Regulations, the service of an officer does not qualify for pension unless it conforms to the following three conditions:-

First.- The service must be under Government.

Second.- The employment must be substantive and permanent.

Third.- The service must be paid by Government.

15. The second condition to Regulation 361 is relevant to the matters involving computation of temporary service towards pension benefits. These three conditions envisaged under Regulation 361 of C.S.R. are explained in Regulations 368 and 370 in the following manner,

368. Except otherwise provided in these Regulations services does not qualify unless the officer holds a substantive office on a permanent establishment.

370. An officer transferred from a temporary to a permanent appointment can count his service in the temporary office, it, though at first created experimentally or temporarily, it eventually becomes permanent.

16. These provisions of C.S.R. are corollary to Pension Rules 1963 and do not in any manner confer a direct right to a contract or temporary employee for grant of pension benefits unless the employee has served as a permanent employee.

17. From the foregoing discussion it is deduced that the benefit of counting of temporary service towards benefit of Regulation 371 – A C.S.R. is available to the Petitioner as her husband has served in Department on temporary basis for more than five years without break under a temporary establishment. The services of Petitioner's husband did fall under the definition of temporary establishment, bringing the case of petitioner within the remit of Regulation 371 – A of CSR.

18. In the case of **Chairman, Pakistan Railway, Government of Pakistan, Islamabad versus Shah Jehan Shah reported in PLD 2016 Supreme Court 534** Honorable Supreme Court has held as under:

> *"7. It is not disputed that the respondent rendered continuous temporary service and that his length of service was continuous and for more than five years. However, the question that needs to be answered is whether he was working in a "temporary establishment" or not. "Temporary establishment" has not been defined in the CSR, the Fundamental and Supplementary Rules issued by the Government of Pakistan, the ESTA Code or the Compendium of Pension Rules and Orders. In this context Article 369 of the CSR mentions temporary establishment but only explains what it is not and thus is not very helpful. Therefore as mentioned earlier in the opinion, as per the settled rules of interpretation, the dictionary meaning of the words has to be resorted to. The Concise Oxford Dictionary (6th Ed.) has defined "temporary" as "lasting, meant to last, only fora time", and "establishment" as an "organized body of mean maintained for a*

purpose". Chambers 21st Century Dictionary defines '"temporary" as "lasting, acting or used, etc for a limited period of time only", and "establishment" as "a public or government institution". Oxford Advanced Learner's Dictionary of Current English (7th Ed.) defines "temporary" as "lasting or intended to last or be used only for a short time; not permanent" and "establishment" as "an organisation, a large institution..." In light of the above dictionary meanings, "temporary establishment" can be said to mean an organisation or institution which is not permanent, rather effective for a certain period only. Admittedly the respondent was serving in Pakistan Locomotive Factory Risalpur, Pakistan Railways, which does not in any way fall within the meaning and purview of "temporary establishment". Thus the respondent could not rely upon Article 371-A of the CSR. Besides, if hypothetically speaking Pakistan Locomotive Factory Risalpur was a temporary establishment, even then the respondent would not be able to take the benefit of Article 371-A (supra) as he otherwise does not qualify for pensionary benefits having wit been subsequently taken into permanent employment, which is sine qua non for the grant thereof.

19. In the case of **SECRETARY, MINISTRY OF FINANCE, ISLAMABAD- and others Versus TAYYABA HALIM SUBHANI and others (2022 S C M R 77)** Honorable Supreme Court of Pakista has re-affirmed this view in the following manner:

11. We find that although the employment of the Respondents was not permanent within the meaning of CSR 361, the establishment under which they were working was permanent and the fact that they rendered services for years shows that they were not employed on temporary basis as a stop-

gap arrangement for short periods of time. Further, that the Federal Public Service Commission by recommending the Respondents for retention into service has confirmed their ability and qualification to hold these posts. It is an admitted fact that the Respondents have been working continuously for more than 5 years. We have gone through the memorandum dated 25.01.2006 whereby it was stated by the Federal Directorate of Education that service rendered on an Ad Hoc basis could be counted towards pay and pensionary benefits. If the Appellants/ Petitioners have allowed the services of Ad Hoc teachers/ lecturers to be counted for pay protection and pension, it is hard to understand why the same was cannot be done in the case of the Respondents. The principle of similarly placed persons dictates that the Respondents also deserve to be treated in the same manner as others who were granted the benefits of pay protection and pension from the date of their initial appointment on daily wages basis. The Respondents have been discriminated against which is in violation of their fundamental rights guaranteed to them by the Constitution of the Islamic Republic of Pakistan, 1973.

20. The grant of pension is not a bounty from the State/employer to the servant/ employee, but it is a compensation to the services rendered by employee to his employer in the days of his ability and capacity. The right to pension has to be earned and for entitlement thereof, the condition of length of service is most relevant and purposive. We have carefully examined the case of Petitioner and find that her husband has served in the department for a period of about more than seven years as permanent employee which though fell well short of Ten years minimum qualifying service, however this deficiency is made good when his temporary services are calculated towards pension benefits.

21. Honorable Supreme Court in the case of **Chairman / Dean Shaikh Zayed Hospital Lahore versus Amjad Mehmood Khan reported in 2025 S C M R 168**, has held as under:

> *"Thus, the law is clear that the contractual period, being temporary service, is recognized by Article 371-A of the CSR for inclusion in the calculation of pension provided that the contractual period is followed by regularization or confirmation without any gap or interruption, in accordance with clause (ii) of Article 371-A of the CSR. Therefore, Federal Service Tribunal has rightly allowed the appeal of the respondent."*

22. The discussion made herein above leads to an irresistible conclusion that the petitioner has made out a case for indulgence by this Court to exercise the powers of judicial review under its writ jurisdiction vested under article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. Consequently, this petition is allowed, the Respondents are directed to release pension benefits of the Petitioner within a period of ninety days from the date of this order. The petitioners claim for financial assistance and group insurance shall also be decided within the said period of time strictly in accordance with law and admissible rules and if found entitled, the financial assistance and group insurance claims shall be disbursed to the petitioner.

Petition stands disposed of in above terms. Office is directed to send copy of this order to Respondents for compliance.

JUDGE

JUDGE

Approved for reporting