

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah, Jamal Khan Mandokhail and Athar Minallah, JJ
VICE-CHANCELLOR AGRICULTURE UNIVERSITY, PESHAWAR and others---Petitioners
Versus
MUHAMMAD SHAFIQ and others---Respondents

C.Ps. Nos.2270, 4783 and 4784 of 2019, C.Ps. Nos.1228 to 1230, 1295 to 1298, 1555, 1781 to 1783, 1807, 456-P and 496-P of 2020, C.P. No. 5871/2021, C.P. No. 5872/2021, C.P. No. 2291/2022, C.P. No. 2782/2022, C.P. No. 3811/2022 to C.P. No. 3813/2022 and C.P. No. 1438/2019, decided on 17th January, 2024.

(Against the order(s)/judgment(s) of Peshawar High Court Peshawar dated 02.04.2019, passed in W.P. No. 956-P of 2018 dated 11.02.2020, passed in W.P. No.3799-P/2019 dated 13.02.2020, passed in W.P. No.4433-P/2019 dated 13.02.2020, passed in W.P. No.4088-P/2019 dated 06.02.2020, passed in W.P. No.3253-P/2019 dated 06.02.2020, passed in W.P. No.4507-P/2019 dated 06.02.2020, passed in W.P. No. 1568-P/2019 dated 06.02.2020, passed in W.P. No. 1512-P/2019 dated 12.03.2020, passed in W.P. No.3091-P/2019 dated 12.03.2020, passed in W.P. No.3582-P/2019 dated 12.03.2020, passed in W.P. No.3583-P/2019 dated 12.03.2020, passed in W.P. No. 5318-P/2019 dated 12.03.2020, passed in W.P. No. 5893-P/2018 dated 04.06.2020, passed in W.P. No.4875-P/2019 dated 29.06.2020, passed in W.P. No. 3538-P/2019 dated 23.09.2021, passed in W.P. No. 1762-P/2020 dated 14.10.2021, passed in W.P. No.3788-P/2020 dated 10.05.2022, passed in W.P. No.2699-P/2020 dated 01.06.2022, passed in W.P. No. 1561-P/2021 dated 12.03.2020, passed in W.P. No.4526-P/2019 dated 12.03.2020, passed in W.P. No.4729-P/2019 dated 12.03.2020, passed in W.P. No.3679-P/2019 dated 07.03.2019, passed in W.P. No.3125-P/2017)

(a) Civil service---

---Contractual employees---Regularization in service---Principles---Once the contractual services are regularized, the appointment can become substantive or permanent and cannot be terminated without due process---Therefore, the regularization of a contractual employee is a fresh appointment into the stream of regular appointment.

Province of Punjab through Secretary, Livestock and Dairy Development, Government of Punjab v. Dr. Javed Iqbal 2021 SCMR 767 ref.

(b) Civil service---

---Contractual employees---Regularization in service---Parameters for regularization in service---Institutional autonomy---Scope---Any institution opting for regularization of its employees must be either mandated by law or must carry out regularization through a well-thought out policy of the institution concerned laying down the criteria and the process for regularization; performance evaluation of the contractual employee must be assessed to determine if the employee meets the standards required for a regular position; there must be availability of positions that match the skills and experience of the contractual employee; the budgetary considerations and financial implication of a regular employee be weighed and considered---There must be a fair assessment of the employee's qualifications, performance and merit, so as to ensure only competent and committed employees be granted permanent employment status---Regularization is, therefore, not a ritualistic and mechanical exercise---It requires fresh assessment of the candidature of the contractual employee by the competent authority before he is made a regular employee as any such act carries long term financial implications on the institution concerned---Process of regularization is grounded in principles of fairness, openness, transparency, non-discrimination and public interest---Regularization therefore has a close nexus with institutional policy and autonomy.

Hadayat Ullah v. Federation of Pakistan 2022 SCMR 1691; Syed Mubashir Raza Jaffri v. Employees of Old Age Benefits Institution 2014 PLC 428 and Ikhtlaq Ahmed v. Chief Secretary, Punjab 2018 SCMR 1120 ref.

(c) Civil service---

---Contractual employees---Regularization in service---Principles---There is no vested right to seek regularization for employees hired on contractual basis unless there is any legal or statutory basis for the same--Process of regularization requires backing of any law, rules or policy---It should adhere to the relevant statutory provisions and government policies---In the absence of any of the same, a contractual employee cannot claim regularization---Any regularization without the backing of law offends the principles of fairness, transparency and meritocracy and that too at the expense of public exchequer.

Faraz Ahmed v. Federation of Pakistan 2022 PLC 198; Government of Khyber Pakhtunkhwa v. Sher Aman and others 2022 SCMR 406; Vice Chancellor, Bacha Khan University Charsadda, Khyber Pakhtunkhwa v. Tanveer Ahmad 2022 PLC (C.S.) 85; Pakistan Telecommunication Company Ltd. v. Muhammad Samiullah 2021 SCMR 998; Messrs Sui Northern Gas Company Ltd. v. Zeeshan Usmani 2021 SCMR 609; Khushal Khan Khattak University v. Jabran Ali Khan 2021 SCMR 977; Pakistan Telecommunication Company Ltd. v. Muhammad Samiullah 2021 SCMR 998; Government of Khyber Pakhtunkhwa v. Saeed-ul-Hassan 2021 SCMR 1376; Muzaffar Khan v. Government of Pakistan 2013 SCMR 304; Government of Balochistan, Department of Health v. Dr. Zahid Kakar 2005 SCMR 642; Government of Khyber Pakhtunkhwa, Workers Welfare Board v. Raheel Ali Gohar 2020 SCMR 2068; Government of Khyber Pakhtunkhwa v. Intizar Ali 2022 SCMR 472 and Pir Imran Sajid v. Managing Director Telephone Industries of Pakistan 2015 SCMR 1257 ref.

(d) Constitution of Pakistan---

---Art. 25---Civil service---Contractual employees---Regularization in service---Principle of similarly placed employees---Scope---Where a contractual employee wishes to be regularized, he must demonstrate statutory basis for such a claim, in the absence of which, relief cannot be granted solely on the principle of similarly placed persons ---Article 25 of the Constitution has no application to a claim based upon other unlawful acts and illegalities---It comes into operation when some persons are granted a benefit in accordance with law but others, similarly placed and in similar circumstances, are denied that benefit---But where a person gains, or is granted, a benefit illegally, other persons cannot plead, nor can the court accept such a plea, that the same benefit must be allowed to them also in violation of law.

Deputy Director Finance and Administration FATA v. Dr. Lal Marjan 2022 SCMR 566 and Muhammad Yasin v. D.G. Pakistan, Post Office 2023 SCMR 394 ref.

(e) Civil service---

---Contractual employees---Regularization in service---Policy matter---Non-interference by Courts---Institutional autonomy---Process of regularization is a policy matter and the prerogative of the Executive which cannot be ordinarily interfered with by the Courts especially in the absence of any such policy---It does not befit the courts to design or formulate policy for any institution, they can, however, judicially review a policy if it is in violation of the fundamental rights guaranteed under the Constitution---Wisdom behind non-interference of courts in policy matters is based on the concept of institutional autonomy.

Waqas Aslam v. Lahore Electric Supply Company Limited 2023 SCMR 549 and Province of Punjab through Chief Secretary, Lahore v. Prof. Dr. Javed Iqbal 2022 SCMR 897 ref.

(f) Civil service---

---Public sector University---Contractual employees---Regularization in service---Policy matter of the University---Non-interference by Courts---Institutional autonomy, concept of---Wisdom behind non-interference of courts in policy matters is based on the concept of institutional autonomy which is defined as a degree of self-governance, necessary for effective decision making by institutions of higher education regarding their academic work, standards, management, and related activities---Institutional autonomy is usually determined by the level of capability and the right of an institution to decide its course of action about institutional policy, planning, financial and staff management, compensation, students, and academic freedom, without interference from outside authorities---Autonomy of public institutions is not just a matter of administrative convenience, but a fundamental requirement for the effective functioning of a democratic society, as public sector organizations are guardians of the public interest---Democracy, human rights and rule of law cannot become and remain a reality unless higher education institutions and staff and students, enjoy

academic freedom and institutional autonomy---Courts must sparingly interfere in the internal governance and affairs of educational institutions i.e., contractual employments; this is because the courts are neither equipped with such expertise, nor do they possess the relevant experience that would allow for interference in such policy matters---Under this autonomous realm, educational institutions are entitled to deference when making any decisions related to their mission---At the same time, any transgression by Courts would amount to the usurpation of the power of another, which would be against the spirit of Article 7 of the Constitution as it is not the role of the Courts to interfere in policy decisions.

Chapter V, Recommendation concerning the Status of Higher-Education Teaching Personnel (1997) UNESCO < [https:// en.unesco. org/about-us/legal-affairs/recommendation-concerning - status - higher-education-teaching-personnel?>](https://en.unesco.org/about-us/legal-affairs/recommendation-concerning-status-higher-education-teaching-personnel?); OECD, Governance and Quality Guidelines in Higher Education: A Review of Governance Arrangements and Quality Assurance Guidelines (2005); Khyber Medical University v. Aimal Khan PLD 2022 SC 92; Principles, Values and Responsibilities, Magna Charta Universitatum (2020); Waqas Aslam v. Lahore Electric Supply Company Limited 2023 SCMR 549; Hafsa Habib Qureshi v. Amir Hamza and others 2023 SCP 388; Abdul Hameed and others v. Water and Power Development Authority 2021 PLC (C.S.) 1439; Regents of University of Michigan v. Ewing 474 U.S. 214 (1985); Healy v. James 408 U.S. 169 (1972); R v. Dunsheath; Ex parte Meredith [1950] 2 All ER 741; Thorne v. University of London [1966] 2 All ER 338; Neelima Misra v. Harinder Kaur Paintal (1990) 2 SCC 746; Bhushan Uttam Khare v. Dean, B. J Medical College (1992) 2 SCC 420 and Basavaiah v. H. L. Ramesh AIR (2010) 8 SCC 372 ref.

(g) Void order---

---When the basic order is without lawful authority, then the entire superstructure raised thereon falls to the ground automatically.

Pakistan People s Party Parliamentarians v. Federation of Pakistan PLD 2022 SC 574 and Atta-ur-Rehman v. Sardar Umar Farooq PLD 2008 SC 663 ref.

(h) Civil service---

---Contractual employees---Regularization in service---Prospective effect---Regularization takes effect prospectively, from the date when a regularization order is passed---This is because regularization is based on several considerations which help gauge not only the competence and ability of the employee, proposed to be regularized, but also the financial impact and long term legal obligations on the employer institution---It is a conscious decision to be taken by the employer institution at a particular time and therefore cannot be given a retrospective effect.

Province of Punjab through Chief Secretary, Lahore v. Prof. Dr. Javed Iqbal 2022 SCMR 897 and Province of Punjab through Secretary, Livestock and Dairy Development, Government of Punjab v. Dr. Javed Iqbal 2021 SCMR 767 ref.

Naveed Akhtar, Advocate Supreme Court along with Jahan Bakht, V.C. and Muhammad Rizwan, Registrar for Petitioners.

Ms. Tahmina Ambreen, Advocate Supreme Court, Hafiz S.A. Rehman, Senior Advocate Supreme Court, Shahid Saleem Khel, Advocate Supreme Court, Jehanzeb Mahsud, Advocate Supreme Court, Niaz Wali Khan, Advocate Supreme Court, Ijaz Ahmad, Advocate Supreme Court, Muhammad Asif Yousafzai, Advocate Supreme Court, Zartaj Anwar, Advocate Supreme Court, Nasrum Minallah, Advocate Supreme Court, Waseem ud Din Khattak, Advocate Supreme Court, Amjad Ali, Advocate Supreme Court, Khaled Rehman, Advocate Supreme Court, Syed Rifaqat Hussain Shah, Advocate-on-Record, Wakeel Khan in person, Shafique, in person and Sultan Mazhar Sher, Additional A.G. Khyber Pakhtunkhwa for Respondents.

Umer A. Ranjha, Law Clerk, Research Assistance.

Date of hearing: 17th January, 2024.

JUDGMENT

SYED MANSOOR ALI SHAH, J.---

Civil Petition No.2270/2019: This consolidated judgment shall decide the instant petition as well as, petitions mentioned in Schedule A to this judgment as common questions of law and facts arise in these cases.

2. The brief facts giving rise to the instant petition is that a set of contractual employees (hereinafter referred to as the Respondents) joined the University of Agriculture, Peshawar (Petitioner) as Class IV employees from 2009 to 2012. Aggrieved of the fact that the Respondents were not considered as permanent employees despite serving the Petitioner University for seven (07) to eight (08) years, they invoked the constitutional jurisdiction of the Peshawar High Court, Peshawar under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the Constitution) vide W.P. No. 965-P/2013 praying for their regularization of service and grant of all back benefits. The High Court held that as some of the Respondents having a similar nature of job, have already been regularized, the Respondents were also entitled to be dealt with accordingly. In doing so, the High Court disposed the petition vide judgment dated 02.04.2019 (Impugned Judgment) directing the Petitioners to consider the Respondents strictly in accordance with law and in line with the earlier judgments of the High Court. Hence, the present appeal by leave of this Court.

3. The following set of cases before us include five categories of employees; (i) Category-A: This includes the Respondents who were contractually employed and subsequently regularized by the High Court. The said regularization has been challenged; (ii) Category-B: In this case, the Respondents were appointed on regular basis after advertisement and in compliance with the due process. Their contention is that they be given regularization from the date of their initial appointment when they were first appointed on contractual basis (ante-date regularization); (iii) Category C: This category includes those Respondents who were regularized through Court orders with immediate effect, which were not challenged by the Petitioner. Having been regularized, the Respondents have once again approached the High Court to seek ante-date regularization, which was granted to them, hence the challenge; Category D: This includes the Respondents who simply seek ante-date regularization. Schedule-A to this judgment lists the cases falling in each of the aforesaid categories.

4. We have heard the learned counsel for the parties perused the record with their able assistance. The questions to be addressed by this Court are two-fold; firstly, whether the contractual employees could be regularized in the absence of any law or policy allowing such regularization; secondly, whether the Respondents who stood regularized through earlier court orders, which remain unchallenged to date, seek ante-date regularization i.e., from the date of their initial appointment on contract basis.

5. In order to understand the issue at hand, it is expedient to understand the regime of regularization which in essence means to make regular or permanent. Once the contractual services are regularized, the appointment can become substantive or permanent and cannot be terminated without due process. Therefore, the regularization of a contractual employee is a fresh appointment into the stream of regular appointment.¹ The differences between a contractual employee and a regular employee is material for both the employee and the employer and, inter alia, include: (i) Duration of employment; a contractual employee is usually employed for a specific period or task, with a set end date. (ii) Benefits; contractual employee generally do not receive the same benefits or statutory protection as a regular employee. (iii) Scope of work; contractual employee is engaged for specific project or task. (iv) Flexibility; contractual employee often has more flexibility in terms of work hours and location. (v) Cost Considerations: a contractual employee can be less costly in the short term as it doesn't require benefits and other long-term financial commitments. (vi) Risk Management; hiring regular employee is often a long-term commitment, so organizations opt for contractual workers to manage risks associated with fluctuating market demands. Therefore, any institution opting for regularization of its employees must be either mandated by law or must carry out regularization through a well-thought out policy of the institution concerned laying down the criteria and the process for regularization; performance evaluation of the contractual employee must be assessed to determine if the employee meets the standards required for a regular position; there must be availability of positions that match the skills and experience of the contractual employee; the budgetary considerations and financial implication of a regular employee be weighed and considered. There must be a fair assessment of the employee's qualifications, performance and merit, so as to ensure only competent and committed employees be granted permanent employment status.² Regularization is, therefore, not a ritualistic and mechanical exercise. It requires fresh assessment of the candidature of the contractual employee by the competent authority before he is made a regular employee as any such act carries long term financial implications on the institution concerned. The process of regularization is grounded in

would be against the spirit of Article 7 of the Constitution as it is not the role of the Courts to interfere in policy decisions.¹⁶ The judicial pronouncement of the Courts in other jurisdictions i.e., United States of America¹⁷, United Kingdom¹⁸ and India¹⁹ also provide that that courts should not interfere in the internal affairs of educational institutions.

9. Now coming to the second question raised, given that the regularization of the Respondents cannot take place without the backing of any law, rule or policy, there lies no claim for ante-date regularization. It is well settled that when the basic order is without lawful authority, then the entire superstructure raised thereon falls to the ground automatically.²⁰ However, if it is the case of some Respondents i.e., Categories B, C, and D who stood regularized through earlier Court orders which remain unchallenged can seek ante-date regularization, it is well established that regularization takes effect prospectively, from the date when a regularization order is passed.²¹ This is because regularization is based on several considerations which help gauge not only the competence and ability of the employee, proposed to be regularized, but also the financial impact and long term legal obligations on the employer institution. It is a conscious decision to be taken by the employer institution at a particular time and therefore cannot be given a retrospective effect. Thus, the Respondents in the aforesaid categories cannot claim ante-date regularization.

10. For the above reasons, the impugned judgments are contrary to the well-established judicial pronouncements of this Court and hence, set aside. Thus, the instant petition filed by the Petitioner and those listed below in Schedule A are converted into appeals and allowed.

11. C.Ps. Nos.4783, 4784 and 456-P/2019: The question of law involved in these petitions is different from the other petitions. Office is, therefore, directed to de-club these petitions from rest of the bunch and fix them separately for hearing. Adjourned.

SCHEDULE-A

Sr. No.	Category	Case Number
1.	Category – A	C.P. No.2270/2019
2.		C.P. No.1230/2019
3.		C.P. No.1781/2019
4.		C.P. No.1782/2019
5.		C.P. No.496-P/2020
6.		C.P. No.2291/2022
7.		C.P. No.3812/2022
8.		C.P. No.1438/2019
9.		C.P. No.1807/2020
10.	Category – B	C.P. No.3811/2022
11.		C.P. No.3813/20222
12.		C.P. No.1228/2020
13.		C.P. No.1229/2020
14.	Category – C	C.P. No.1295/2020
15.		C.P. No.1296/2020
16.		C.P. No.1297/2020
17.		C.P. No.1298/2020
18.		C.P. No.1555/2020
19.		C.P. No.1783/2020
20.		C.P. No.5871/2021
21.		C.P. No.5872/2021
22.	Category – D	C.P. No. 2782/2022

MWA/V-1/SC Order accordingly.

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- [1](#) Province of Punjab through Secretary, Livestock and Dairy Development, Government of Punjab v. Dr. Javed Iqbal (2021 SCMR 767).
 - [2](#) Hadayat Ullah v. Federation of Pakistan (2022 SCMR 1691) and Syed Mubashir Raza Jaffri v. Employees of Old Age Benefits Institution (2014 PLC 428).
 - [3](#) Ikhtlaq Ahmed v. Chief Secretary, Punjab (2018 SCMR 1120).
 - [4](#) Faraz Ahmed v. Federation of Pakistan (2022 PLC 198); Government of Khyber Pakhtunkhwa v. Sher Aman and others (2022 SCMR 406); Vice Chancellor, Bacha Khan University Charsadda, Khyber Pakhtunkhwa v. Tanveer Ahmad (2022 PLC (C.S.) 85); Pakistan Telecommunication Company Ltd. v. Muhammad Samiullah (2021 SCMR 998); Messrs Sui Northern Gas Company Ltd. v. Zeeshan Usmani (2021 SCMR 609); Khushal Khan Khattak University v. Jabran Ali Khan (2021 SCMR 977); Pakistan Telecommunication Company Ltd. v. Muhammad Samiullah (2021 SCMR 998); Government of Khyber Pakhtunkhwa v. Saeed-Ul-Hassan (2021 SCMR 1376); Muzaffar Khan v. Government of Pakistan (2013 SCMR 304) and Government of Balochistan, Department of Health v. Dr. Zahid Kakar (2005 SCMR 642).
 - [5](#) Government of Khyber Pakhtunkhwa v. Sher Aman and others (2022 SCMR 406) and Government of Khyber Pakhtunkhwa, Workers Welfare Board v. Raheel Ali Gohar (2020 SCMR 2068).
 - [6](#) Government of Khyber Pakhtunkhwa v. Intizar Ali (2022 SCMR 472) and Pir Imran Sajid v. Managing Director Telephone Industries of Pakistan (2015 SCMR 1257).
 - [7](#) Deputy Director Finance and Administration FATA v. Dr. Lal Marjan (2022 SCMR 566).
 - [8](#) Muhammad Yasin v. D.G. Pakistan, Post Office (2023 SCMR 394).
 - [9](#) Waqas Aslam v. Lahore Electric Supply Company Limited (2023 SCMR 549) and Province of Punjab through Chief Secretary, Lahore v. Prof. Dr. Javed Iqbal (2022 SCMR 897).
 - [10](#) Chapter V, Recommendation concerning the Status of Higher-Education Teaching Personnel (1997) UNESCO < <https://en.unesco.org/about-us/legal-affairs/recommendation-concerning-status-higher-education-teaching-personnel?>>
 - [11](#) OECD, Governance and Quality Guidelines in Higher Education: A Review of Governance Arrangements and Quality Assurance Guidelines (2005).
 - [12](#) Khyber Medical University v. Aimal Khan (PLD 2022 SC 92).
 - [13](#) Principles, Values and Responsibilities, Magna Charta Universitatum (2020).
 - [14](#) Waqas Aslam v. Lahore Electric Supply Company Limited (2023 SCMR 549).
 - [15](#) Hafsa Habib Qureshi v. Amir Hamza and others (2023 SCP 388).
 - [16](#) Abdul Hameed and others v. Water and Power Development Authority (2021 PLC (C.S.) 1439).
 - [17](#) Regents of University of Michigan v. Ewing 474 U.S. 214 (1985); Healy v. James 408 U.S. 169 (1972).
 - [18](#) R v. Dunsheath; Ex parte Meredith [1950] 2 All ER 741; Thorne v. University of London [1966] 2 All ER 338.
 - [19](#) Neelima Misra v. Harinder Kaur Paintal (1990) 2 SCC 746; Bhushan Uttam Khare v. Dean, B. J Medical College (1992) 2 SCC 420; Basavaiah v. H. L. Ramesh AIR (2010) 8 SCC 372.
 - [20](#) Pakistan People s Party Parliamentarians v. Federation of Pakistan (PLD 2022 SC 574); Atta-ur-Rehman v. Sardar Umar Farooq (PLD 2008 SC 663).
 - [21](#) Province of Punjab through Chief Secretary, Lahore v. Prof. Dr. Javed Iqbal (2022 SCMR 897); Province of Punjab through Secretary, Livestock and Dairy Development, Government of Punjab v. Dr. Javed Iqbal (2021 SCMR 767).