

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**Present**

Mr. Justice Amin-ud-Din Khan  
Mr. Justice Muhammad Ali Mazhar  
Mr. Justice Syed Hasan Azhar Rizvi

**Civil Petition No. 6059 of 2021**

On appeal from the Judgment, dated  
18.10.2021 passed by the Lahore High  
Court Bahawalpur Bench, Bahawalpur  
in W.P. No. 6539/2014

Chairman, NADRA, NADRA Headquarter, ...Petitioner(s)  
Islamabad and others

**Versus**

Abdul Majeed and another ...Respondent(s)

For the Petitioner(s) : Hafiz S.A.Rehman, Senior ASC  
a/w Anis Muhammad Shahzad,  
AOR

For the Respondent : Mr. Muhammad Tariq, ASC  
No.1 Mr. Aftab Alam Yasir, ASC  
Syed Rifaqat Hussain Shah, AOR

Date of Hearing : 28.11.2024

**Judgment**

**Muhammad Ali Mazhar, J:** This Civil Petition for leave to appeal is directed against the judgment dated 18.10.2021 passed by the Lahore High Court, Bahawalpur Bench, in Writ Petition ("W.P.") No. 6539/2014.

2. According to the facts narrated in the civil petition, the respondent No.1 was appointed by the National Database & Registration Authority ("**NADRA**") to the post of Naib Qasid on contract basis *vide* letter dated 11.02.2011 and he officially joined his duty on 04.03.2021. The petitioners introduced a scheme for regularization of service for those employees who had completed one year of their contractual service, and in this regard, on 12.04.2012, a Notification/Policy Decision was issued by the Competent Authority for the "Regularization of NADRA Employees/Non-routine Cases" who had completed one year of their contractual service on 29.02.2012. However, the respondent No. 1 was not found eligible only for the reason that he joined the service on 04.03.2011,

resulting in a service period that was three days short. Being aggrieved, the respondent No.1/petitioner filed W.P. No. 6539/2014 in the Lahore High Court, Bahawalpur Bench, which was allowed *vide* the impugned judgment with the directions to the department to regularize the services of the respondent No.1/petitioner.

3. The learned counsel for the petitioners argued that the Competent Authority had rightly issued the order dated 08.08.2014, whereby the services of the respondent No.1 were dispensed with upon the expiry of the contract period. It was further contended that the period of contract was effectuated from 04.03.2011 to 03.03.2014 and that the services were dispensed with effect from 31.07.2014; hence, the respondent No.1 had no *locus standi* to file the writ petition. It was further averred that only the department had the authority to evaluate the performance to determine whether an employee was entitled to be retained for a further period. He further argued that the Notification for the regularization of NADRA employees was issued by the Competent Authority by offering the option to choose between the BPS and NPS (NADRA Pay Scales) for those who had completed one year of contractual service as of 29.02.2012, but the respondent No.1 was not found eligible. The learned counsel further contended that the Notification/Policy Decision has already been considered by this Court in the case of Chairman NADRA, Islamabad, through Chairman, Islamabad and another Vs. Muhammad Ali Shah and others (2017 SCMR 1979).

4. At the very outset, the learned counsel for the respondent No.1 argued that no reason has been assigned as to why the remedy of an Intra Court Appeal ("ICA"), provided under Section 3 of the Law Reforms Ordinance, 1972, was not availed against the impugned judgment of the learned High Court. He relied on the judgment of this Court rendered in the case of Federal Board of Revenue Vs. Messrs. Hub Power Company Ltd. and others (PLD 2023 SC 207). It was further contended that, based on another judgment of the learned High Court, NADRA has already regularized the services of various contract employees, and their regularization letters are attached with the concise statement; however, the respondent No.1 was discriminated against. He further contended that the regularization policy should have been enforced in favour of all employees without any discrimination.

5. Heard the arguments. To begin with, we would like to thrash out the quintessence of the findings recorded by the learned High Court in the impugned judgment. There was no doubt that the respondent No.1 was appointed on a contract basis *vide* letter dated 11.02.2011 on the disabled persons quota. The learned High Court also noted that the respondent No.1/petitioner was appointed with effect from 04.03.2011 to 03.03.2014, but no explanation was offered in the comments filed in the High Court as to why the service of the respondent No.1/petitioner was not regularized or extended, and how he was retained in service till 31.07.2014 despite the expiry of his contract period, or under what arrangement the respondent No.1/petitioner was allowed medical leave till 25.08.2014 when his contract of service had already expired and was never extended. In addition, the thirty days' notice, as per the terms and conditions mentioned in the offer of appointment, was also not tendered before the issuance of the termination order. Most importantly, the High Court also noted that the respondent No.1/petitioner was appointed on disabled quota, which otherwise needed special consideration.

6. As for the case of Chairman NADRA (*supra*), relied upon by the learned counsel for the petitioner, this Court discussed the "Option Form," which was required to be filled by all eligible employees, and which had to be submitted by 22.03.2012. In the aforesaid judgment, this Court held that the regularization process initiated by NADRA would proceed toward completion after the eligible contractual employees had submitted their Option Forms. However, before the submission of the Option Form, a contractual employee would continue as such, i.e., remain a person employed on contract by NADRA. It reflects that the petitioners in the above case had challenged certain terms/conditions of NADRA's letter dated 06.03.2012, hence this Court held that in doing so, the said petitioners undermined their own status of becoming regular or permanent employees of NADRA. It was further held that if they (petitioners) did not accept NADRA's letter dated 06.03.2012, or any part thereof, they would remain as contractual employees of NADRA. Hence, the Court concluded that the High Court could not renegotiate, alter, or amend the terms of regularization offered by NADRA, for the simple reason that the High Court did not have jurisdiction to do so. Therefore, until the employees were regularized,

they would continue to be governed by the terms and conditions of the contract they had with NADRA.

7. Why is the judgment in the case of Chairman NADRA (*supra*) distinguishable? Firstly, in the case at hand, the respondent No.1/petitioner did not challenge in the High Court the terms/components of NADRA's letter dated 06.03.2012, therefore in light of the aforesaid judgment, he could not be deemed to have undermined his own status of becoming a regular or permanent employee of NADRA. He also did not deny before the High Court that he had accepted NADRA's letter dated 06.03.2012, or any part thereof, to continue as a contractual employee of NADRA. Instead, he invoked the constitutional jurisdiction of the High Court to enforce NADRA's own policy decision for the regularization of contractual employees with certain terms and conditions. He was deprived of regularization solely because he fell three days short of completing the one year tenure required under the policy. In the same judgment (Chairman NADRA) this Court further held that the constitutional jurisdiction of the High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution") could not be invoked by a contractual employee of a statutory organization. However, it was only after the terms and conditions offered by NADRA had been accepted, and the Option Form submitted, that the status of a contractual employee would convert to that of a regular employee of NADRA.

8. No doubt, various dicta laid down by this Court have held that contractual employees have no vested right to regularization, but their regularization may be considered subject to fitness, suitability, and the applicable laws, rules, and regulations of the concerned Department. No vested right accrues to the employees hired on a contractual basis unless there is a departmental decision, policy, or statutory backing and protection, and no automatic right to regularization can be claimed. Here, however, the respondent No.1 was not claiming regularization of his contractual engagement hypothetically but was emphasizing the policy decision introduced for regularization benefits announced by the department itself. Therefore, the question of statutory rules' availability or non-availability comes later. The dominant issue in this case revolves around the department's own regularization policy. Considering

this, it cannot be assumed that the petitioners (NADRA) are not amenable to the writ jurisdiction or excluded from the rigors of constitutional jurisdiction of the High Court provided under Article 199 of the Constitution in the present circumstances. Another significant aspect that cannot be ignored is that, earlier, *vide* Notification dated 17.10.2011 (page 29 of the paper book) issued by Chairman NADRA, the services of employees covered under Employment Categories O-1 to O-10 and T-1 to T-10 were regularized pursuant to the Orders of the Ministry of Interior, Government of Pakistan.

9. The nucleus of the respondent No.1's claim was based on the regularization policy and the discrimination meted out to him, as similar benefits were accorded to various other contractual employees. This crucial aspect of the case is evident from various letters attached with C.M.A No.10988/2014. On the strength of an earlier judgment dated 20.12.2016 by the Islamabad High Court rendered in W.P. No. 1495/2016, the services of certain contractual employees, namely (1) Mr. Jamil Ahmed, (2) Mr. Shamsullah, (3) Mr. Manzoor Ahmed, (4) Mr. Gul Nawaz Khan, (5) Mr. Arbab Ali, (6) Ms. Mahwish Hayat, (7) Mr. Abdul Nasir Khan, (8) Mr. Nabi Bukhsh, (9) Mr. Abdul Wahab, and (10) Mr. Hidayatullah were regularized, even though they were ineligible for regularization on 29.02.2012 due to having less than one year of service. While other employees, namely (1) Mr. Saim Zafar, (2) Mr. Ahmed Zubair, (3) Mr. Sabeer, (4) Ms. Faiza Hanif, (5) Mr. Manzoor Ahmed, and (6) Mr. Abdul Fakoor Khan were found ineligible for regularization because they were appointed after 29.02.2012, the cut-off date for completing one year of service required for regularization. When we specifically asked the learned counsel for the petitioners whether the judgment rendered by the High Court in W.P. No. 1495/2016 had been challenged, he answered in the negative. This indicates that the said judgment attained finality for all intents and purposes.

10. According to Article 25 of the Constitution, all citizens are equal before the law and are entitled to equal protection of the law, and there shall be no discrimination on the basis of sex. The phrase "equal laws" accentuates that there should be no discrimination between individuals in the context and perspective of law and policy if both are evidently on the same footing. The

periphery of our constitutional code mandates equality and ensures equal opportunity among persons substantially within the same class, without arbitrary distinctions or preferences. Discrimination, in its literal sense, involves a distinction, direct or indirect, without any lawful justification, leading to inequality or preferential treatment. To enjoy the protection of law and to be treated in accordance with law is an inalienable right of every citizen. Article 4 of the Constitution incorporates the doctrine of equality before the law and equal protection under it, ensuring that no action detrimental to the life, liberty, body, reputation or property of any person can be taken except in accordance with the law. Public functionaries are obligated to act in good faith, honestly, and within the precincts of power, ensuring that individuals are treated in accordance with the law. The Objectives Resolution, made a substantive part of the Constitution by virtue of Article 2-A, unequivocally enjoins that the principles of equality, social justice, and economic justice, as enunciated by Islam, will be fully observed and guaranteed as fundamental rights. Furthermore, the Principles of Policy contained in Article 38 of the Constitution also provide that the State should secure the well-being of the people by raising their standards of living and by ensuring equitable adjustment of rights between employer and employees, and provide for all citizens, within the available resources of the country, facilities for work and adequate livelihood, and reduce disparity in income and earnings of individuals.

11. The State is obliged under Article 3 of the Constitution, to ensure the elimination of all forms of exploitation and work towards the gradual fulfilment of the fundamental principle of "from each according to his ability, to each according to his work". In the case of NWFP Public Service Commission Vs. Muhammad Arif (**2011 SCMR 848**), this Court held that Article 25 of the Constitution enjoins that all citizens are equal before the law and are entitled to equal protection of law, i.e., all persons subjected to a law should be treated alike under all circumstances and conditions, both in privileges conferred and in the liabilities imposed. Equality should not be in terms of mathematical calculations and exactness. It has to be between individuals placed in the same set of circumstances. It must, however, be kept in view that though individuals similarly situated or in similar circumstances are to be treated in the same

manner, but the equality clause, particularly the provision about the equal protection of the law, does not mean that all citizens shall be treated alike under all set of circumstances and conditions, both in respect of privileges conferred and liabilities imposed. Whereas, in the case of Fida Hussain Vs. The State (PLD 2002 SC 46), while dilating upon the nitty-gritties of Article 25 and 4 of the Constitution, this Court held that the rule of consistency must be followed in order to maintain balance and the doctrine of equality before the law.

12. At one fell swoop, we also want to dwell on another indispensable sphere which is not only significant but also has direct nexus with the controversy involved for the employment issues of disabled persons. It is an admitted position the respondent No.1 was appointed under the disabled quota *vide* letter of contract dated 11.02.2011. According to his "Disability Certificate", dated 03.11.2007, issued by the Assessment Board for the Disabled Persons, Islamabad, National Council for the Rehabilitation of Disabled Persons, Ministry of Social Welfare & Special Education, Government of Pakistan, the respondent No.1 suffers from Primary Periodic Paralysis (PPP) in the right leg. Medically, PPP refers to a group of diseases that temporarily cause muscle stiffness, weakness, or immobility, and it occurs when there is a problem with the muscle cells, specifically the channels that let key minerals, i.e., sodium, chloride, and potassium, flow in and out of them [Ref: <https://www.webmd.com/brain/primary-periodic-paralysis>].

13. It is quite laudable that NADRA has provided job opportunities to the disabled persons based on their ability and capacity to work. However, if a disabled person, initially appointed on a contractual basis, performs his duties for a considerable period of time to the satisfaction of his superiors/department, then proprietary demands that he should be regularized as a permanent employee so that he may reap all employment benefits, rather than being dragged on contractual basis perpetually, as seen in this case, where the respondent No.1, despite being only three days short of completing the required one year of service, was denied regularization, while others similarly situated, who were short by a greater margin than the respondent No.1 were accommodated as directed by the High Court without any challenge to that judgment in this Court.

14. If we look into the main objective of the United Nations Convention on the Rights of Persons with Disabilities, 2006 ("Convention"), it *inter alia* visualizes the promotion and protection of the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and respect for their inherent dignity. Persons with disabilities include those who have long-term physical, mental, intellectual, or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others. Discrimination on the basis of disability means any distinction, exclusion, or restriction that impairs or nullifies the recognition, enjoyment, or exercise of all human rights and fundamental freedoms on an equal basis in the political, economic, social, cultural, civil, or any other field. Article 27 of the Convention, which pertains to "Work and employment on an equal basis," includes the right to gain a living through work freely chosen or accepted in a labour market and work environment that is open, inclusive, and accessible to persons with disabilities. It also prohibits the discrimination on the basis of disability in all matters concerning employment, including conditions of recruitment, hiring, continuance of employment, career advancement, and safe and healthy working conditions [Ref: <https://mohr.gov.pk/SiteImage/Misc/files/UNCRPD.pdf>].

15. More so, in our local legislation, the Disabled Persons (Employment & Rehabilitation) Ordinance, 1981 ("Ordinance 1981"), provides for the employment, rehabilitation, and welfare of disabled persons. According to Section 2 (Definitions), Clause (c), a "disabled person" means a person who, on account of injury, disease or congenital deformity, is handicapped for undertaking gainful profession or employment in order to earn his livelihood, and includes a person who is blind, deaf, physically or mentally handicapped. The definition of "disease" in Clause (d) includes physical or mental conditions arising from the imperfect development of any organ. The foremost objective of the Ordinance 1981 is to protect and safeguard the overall interest of disabled persons, including provisions for employment commensurate with their capabilities and capacities to work. Our survey of related laws reveals that a Bill, titled "Disabled Persons (Employment and Rehabilitation (Amendment) Act, 2015" was introduced to make



certain amendments in the Ordinance 1981, and Section 2A was proposed to be inserted to prioritize the welfare of disabled persons at all levels, but it appears that it remained pending and did not culminate in becoming an Act of Parliament.

16. In order to promote, protect, and effectively ensure the rights and inclusion of persons with disabilities in the communities, in line with the injunctions of Islam and the provisions of the Constitution, as well as other human rights treaties and conventions to which Pakistan is party, and to advance efforts for recognition of their respect and dignity in the society, another Bill was introduced, i.e., "ICT Rights of Persons with Disability Act, 2020". This Bill, applicable to the Islamabad Capital Territory (ICT), obligated the government to ensure that the persons with disabilities are treated the same as persons without such disabilities, that they are not discriminated against, that they are provided necessary support for the exercise of their rights and the legal capacity to enjoy their rights, and if they need support to exercise their legal capacity, then such support is provided to them free of cost, and that no person, institution, organization, or entity, whether public or private, shall discriminate against a person on the ground of disability in the matters of employment, promotion, career development, and enjoying the fruits of his employment. Moreover, the government shall reserve an employment quota as prescribed by the Federal Government to be periodically reviewed, at various levels, for persons with disabilities in government departments, institutions, entities, and corporate entities owned and managed by the government, and the concerned department shall implement the allocated quota; the terms and conditions of employment shall not be less favorable for persons with disabilities as compared with those offered to other persons appointed against same or similar positions. Section 32 of the aforesaid Bill is somewhat significant wherein the concept of "Special Disability Courts" was intended to be introduced for speedy justice, whereby the government may designate, and may encourage provincial governments to designate, courts to hear cases under this Act or other laws, in which one or more parties or persons with disabilities are involved, with an effective institutionalized mechanism to monitor cases in the courts by appropriate judicial forums as devised by the respective High Court. Unfortunately,

however, this Bill also remained a bill, without becoming an Act of Parliament, for no apparent reason.

17. Likewise, after the 18<sup>th</sup> Constitutional Amendment in 2010, the provinces have enacted their own laws to extend equal rights and benefits to the disabled or differently-abled persons, such as the “Punjab Empowerment of Persons with Disabilities Act, 2022” which is also a comprehensive legislation enacted to provide for the protection, welfare, empowerment, and inclusion of persons with disabilities and their families in the province of Punjab. The “Sindh Persons with Disability Empowerment Act, 2018” is also legislated to safeguard the rights of persons with disabilities in the province of Sindh. It is a comprehensive law that has been enacted to recognize and protect the rights of persons with disabilities and to promote their integration and participation in society. While the “Khyber Pakhtunkhwa Disabled Persons (Employment & Rehabilitation) (Amendment) Act, 2012” and the “Balochistan Persons with Disabilities Act, 2017” are also both equally vigorous and effective to protect the interests of disabled persons, on all fours.

18. While the aforesaid catalogue of legislation is very commendable (except for those still at the Bill stage without any further progress), but in unison, a fundamental question cropped up in our frame of mind that although these laws in field are well-regimented and reflect sincere intentions, meaningful and earnest efforts are required at all government levels for proper and vigilant implementation of these laws. A proactive approach is needed to accord the benefits of these laws to disabled persons across the board, ensuring equal opportunity and non-discrimination. The *raison d'être* of such legislation is not to merely provide some benefits as an act of compassion but to rejuvenate the category of such persons who suffer from some disabilities, despite their challenges, are differently-abled, and deserve to live with dignity and contribute meaningfully to society. These individuals require encouragement and motivation so that they may also enjoy the fundamental rights as enshrined in our Constitution, just as other citizens do. It is imperative for all government levels to facilitate their integration into the mainstream, enabling them to leverage their abilities and sense of worth. This, in turn, allows them to earn a livelihood with respect and independence, rather than relying on financial assistance or help,

which may hurt their ego and undermine their self-esteem and dignity. The teachings of Islam also emphasize benevolence, care, and compassion towards such individuals, urging us to adopt a wide-ranging and solicitous approach to empower them for active participation in society with dignity and vitality.

19. Last but not least, the learned counsel for the respondent No.1 argued that the petitioners have directly approached this Court without recourse to the remedy of an ICA in the High Court. The learned counsel also relied upon the dictum laid down by this Court in the case of Federal Board of Revenue Vs. Messrs. Hub Power Company Ltd. and others (*supra*), wherein it was held that filing an ICA is a rule of practice for regulating the procedure of the Court and does not oust or abridge the constitutional jurisdiction of this Court. Since the Court found no exceptional circumstances, and the objection regarding the maintainability of the petition was duly raised at the first instance, the preliminary objection raised was upheld, and the petition was dismissed by this Court as not maintainable. Whereas, in the case of Pakistan Telecommunication Co. Ltd. Vs. Iqbal Nasir (**PLD 2011 SC 132**), this Court earlier considered in detail the objection raised for non-filing of an ICA before approaching this Court, *vis-à-vis* the dicta laid down in the cases of Imtiaz Ali Malik Vs. Mst. Surrya Begun (**1979 SCMR 22**), Pakistan International Airlines Corporation Vs. Samina Masood (**PLD 2005 SC 831**), and Accountant General for Pakistan (Revenue) through Auditor-General Vs. Zia Mohy-ud-Din (**PLD 2008 SC 164**), along with the contrary view taken in the cases of Mst. Shohrat Bano Vs. Ismail Dada Adam Soomar (**1968 SCMR 574**), Punjab Employees Social Security Institution Lahore and others Vs. Manzoor Hussain Khan (**1992 SCMR 441**), Province of Punjab through Secretary Excise and Taxation, Government of Punjab Vs. Sargodha Textile Mills Ltd., Sargodha (**PLD 2005 SC 988**), and Commissioner of Income Tax Vs. Messrs. Media Network (**PLD 2006 SC 787**). After considering the ratio of the judgments discussed in the above cases, this Court ultimately held that the requirement of filing an ICA is a rule of practice for regulating the exercise of discretion, which does not oust or abridge the constitutional jurisdiction of this Court. In certain exceptional circumstances, this Court can entertain petitions or, as the case may be, direct appeals even where the remedy of an

ICA under Section 3 of the Law Reforms Ordinance, 1972, has not been availed by a party.

20. The deducible ratio of the aforesaid judgment is that where no objection was raised in the first instance or at an earlier stage of the proceedings, and filing of an ICA is a rule of practice for regulating the exercise of discretion, this does not oust or abridge the constitutional jurisdiction of this Court. In certain exceptional circumstances this Court can entertain petitions. In our view, in the case at hand, while no doubt an ICA should have been filed if permissible under Section 3 of the Law Reforms Ordinance, 1972, the ground reality cannot be overlooked: that this civil petition has been pending since 2021. If this objection is taken into consideration at this belated stage, it will serve no purpose when the matter was otherwise heard on merits. In fact, while directly knocking on the doors of this Court without availing the opportunity or remedy of ICA, at least one valid remedy of right of appeal is renounced or aborted, and in such eventuality, nobody suffers except the petitioners, who, either under ill-advice or intentionally, circumvent or relinquish such lawful right. So in all fairness, indeed it is in their own interest that while approaching this Court directly bypassing the remedy of an ICA, they should vigilantly consider, in order to avoid technical objections of maintainability, whether in accordance with the law, a right to challenge a judgment passed by a learned single judge in writ jurisdiction can be challenged in an ICA or not. Since this objection was raised for the first time on the date when we heard this case on merits, which had been pending since 2021, therefore, at this stage we do not find it fit to nonsuit the petitioners on this ground alone.

21. In wake of the above discussion, we do not find any illegality or perversity in the impugned judgment passed by the learned High Court. The Civil Petition is dismissed and leave to appeal is refused.

**Judge**

Islamabad  
28.11.2024  
Khalid  
Approved for reporting.

**Judge**

**Judge**

