

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

MR. JUSTICE QAZI FAEZ ISA  
MR. JUSTICE YAHYA AFRIDI  
MR. JUSTICE MUHAMMAD ALI MAZHAR

**Civil Appeal Nos. 1292 to 1301/21**

*(On appeal against the judgment dated 11.02.2021 passed by the Sindh Service Tribunal, Karachi, in Appeals No. 25, 60, 68, 69 & 118/2020)*

**AND**

**Civil Misc. Appeal No. 103 of 2022**

*(Against the order of the Registrar)*

*Mushtaque Ahmed Memon (in CAs. 1292-1296/2021)*

*Ali Akbar Abro. (in CAs. 1297-1301/2021 & CM Appeal 103/2022)*  
... Appellants

**Versus**

*Arshad Hussain Bhutto, etc. (in CAs. 1292 & 1299/2021)*

*Ghulam Shabbir Memon, etc. (in CAs. 1293 & 1300/2021)*

*Habib ur Rehman Shaikh, etc. (in CAs. 1294 & 1301/2021)*

*Mukhtiar Ahmed Samejo, etc. (in CAs. 1295 & 1298/2021)*

*Muhammad Ayub Junejo, etc. (in CAs. 1296 & 1297/2021)*

*The Registrar, Supreme Court of Pakistan. (in CM Appeal No.103/2022)*

... Respondents

For the Appellants: Mr. Abdul Rahim Bhatti, ASC.  
Syed Rifaqat Hussain Shah, AOR.  
*(in CAs 1292-1296 of 2021)*

Nemo.  
*(in CAs 1297-1301 of 2021 & CM Appeal 103/2022)*

For Govt. of Sindh: Mr. Fauzi Zafar, Addl. AG., Sindh.  
Mr. M. Soulat Rizvi, Addl. AG., Sindh.  
Mr. Ghulam Ali Birhamani,  
Addl. Secretary, S & GAD  
Mr. Ramzan Solangi, S.O.

For the Respondents: Mr. M. Shoaib Shaheen, ASC.  
*(in CAs 1292, 1295, 1298 of 2021)*

Mr. Ahmed Ali Ghumro, ASC.  
Mr. M. Sharif Janjua, AOR.  
*(in CA 1293, 1294, 1296, 1300 & 1301 of 2021)*

Date of Hearing: 20.09.2022

**ORDER**

**Qazi Faez Isa, J.** These ten Civil Appeals assail the common judgment dated 11 February 2021 of the Sindh Service Tribunal, Karachi (**'the Tribunal'**). Five appeals have been filed by Mr. Mushtaque Ahmed Memon and five appeals have been filed by Mr. Ali Akbar Abro. The learned counsel for the respondent, law officers and officers of the Sindh Government have come from Karachi, undoubtedly at considerable expense. The learned counsel representing Mr. Ali Akbar Abro has filed an application seeking adjournment, on the ground that he had made some commitment in the city of Lahore. In order dated 28 April 2022 it was recorded, *'that no further request for adjournment will be entertained from the appellants' side'*, yet another adjournment is sought. The reason mentioned in the adjournment application also does not justify adjourning these appeals. The learned counsel could have elected to address us through video-link from Lahore, but did not do so. Therefore, the request for adjournment cannot be entertained.

2. The impugned judgment in all these appeals is the same. We have heard Mr. Abdul Rahim Bhatti, the learned counsel for Mr. Mushtaque Ahmed Memon. The question for determination is the scope and applicability of the Sindh Civil Servants (Regularization of Adhoc Appointments) Act, 1994<sup>1</sup> and amendment thereto made by the Sindh Civil Servants (Regularization of Adhoc Appointments) (Amendment) Act, 2014<sup>2</sup> (respectively **'the 1994 Act'** and **'the 2014 Act'**).

3. The private respondents filed appeals before the Tribunal as their seniority had been adversely affected by certain notifications issued under the 2014 Act the benefit of which was extended to the appellants; these appeals were allowed through the said common judgment. The learned Mr. Bhatti submits that the 2014 Act had to be given effect to, and the seniority of the private respondents was affected as a consequence of the 2014 Act which was not challenged. The learned counsel also cited a number of judgments, but there is no need to mention these as having examined them, none are relevant for the determination of the present controversy.

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<sup>1</sup> PLD 1996 Sindh Statutes 165.

<sup>2</sup> PLD 2014 Sindh Statutes 509.

4. The learned Additional Advocate-General, Sindh supports the appellants and states that as long as the 2014 Act holds the field it has to be given effect to.

5. Mr. Shoaib Shaheen, the learned counsel representing the private respondents states that the appellants were illegally appointed and their appointments cannot be sustained and cited the cases of *Contempt Proceedings against Chief Secretary, Sindh*,<sup>3</sup> *Ali Azhar Khan Baloch v Province of Sindh*,<sup>4</sup> *Abu Bakar Farooq v Muhammad Ali Rajpar*.<sup>5</sup> He further states that if the appointments of the appellants are to be sustained pursuant to the 1994 Act, then their seniority would commence from the date of their regularization, and in this regard reliance has been placed upon the judgments in the cases of *Province of the Punjab v Nargas Parveen*<sup>6</sup> and *Government of Khyber Pakhtunkhwa v Muhammad Younas*.<sup>7</sup> Mr. Ahmed Ali Ghumro, the learned counsel representing the private respondents adopts the submissions of the learned Mr. Shoaib Shaheen.

6. We are informed that initially the private respondents had preferred a constitution petition before the High Court of Sindh which was objected to by the official respondents on the ground that they should approach the Tribunal. Consequently, after dismissal of their petition the private respondents filed appeals before the Tribunal to safeguard their seniority.

7. To properly understand the controversy it would be appropriate to reproduce the 2014 Act, as under:

‘The Sindh Civil Servants (Regularization of Adhoc  
Appointment) Act, 2014  
Sindh Act No.XII of 2014  
AN  
ACT  
to amend the Sindh Civil Servants (Regularization of  
Adhoc Appointment) Act, 1994.

WHEREAS it is expedient to amend the Sindh Civil  
Servants (Regularization of Adhoc Appointment) Act, 1994,  
in the manner hereinafter appearing;

It is hereby enacted as follows:-

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<sup>3</sup> 2013 SCMR 1752, paras 116, 121, 123 and 125.

<sup>4</sup> 2015 SCMR 456, para, 121.

<sup>5</sup> 2019 SCMR 830, paras, 11 and 12.

<sup>6</sup> 2020 SCMR 1519.

<sup>7</sup> 2021 SCMR 1045.

1. (1) This Act may be called the Sindh Civil Servants (Regularization of Adhoc Appointments) (Amendment) Act, 2014.

(2) It shall come into force at once and shall be deemed to have taken effect on and from 28th July, 1994.

2. In the Sindh Civil Servants (Regularization of Adhoc Appointments), 1994, in section 3, in sub-section (1), in the last line, for the words "the date of the commencement of this Act", the words "the date of his initial appointment" shall be substituted.'

8. What the 2014 Act sought was to give an advantage to the appellants with retrospective effect at the expense of the vested rights of the private respondents. Unlike the appellants the private respondents entered into the *service of Pakistan* in terms of Article 240(2) of the Constitution of the Islamic Republic of Pakistan ('**the Constitution**') by being selected by Sindh Public Service Commission ('**the Commission**') constituted by the Sindh Public Service Commission Act, 1989<sup>8</sup>, which was enacted pursuant to Article 242 of the Constitution. While the appellants came through the proverbial back door and were saved by the 1994 Act. However, we need not consider the constitutionality of the 1994 Act because that issue is not before us and twenty-eight years have passed since the appellants' regularization. However, having secured their employment by the 1994 Act an unjustified, illegal and unconstitutional benefit was sought to be extended to them through the said notifications and the 2014 Act. Incidentally, the reasons to enact the 2014 Act are neither given therein nor provided by the appellants. Article 25(1) proscribes discrimination and Article 27(1) of the Constitution prohibits discrimination in the *service of Pakistan* (except positive discrimination mentioned in the provisos thereto).

9. The impugned judgment had correctly interpreted the 2014 Act in terms of the judgment of this Court (*Muhammad Mubeen-us-Salam v Federation of Pakistan*<sup>9</sup>) and had concluded, that:

'17. In the light of above it can be said safely that the amendment brought by Act of 2014 used for taking away the constitutional rights of appellants after twenty years cannot be recognized as constitutionally legal and valid.

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<sup>8</sup> PLD 1990 Sindh Statutes 19.

<sup>9</sup> PLD 2006 Supreme Court 602, para 65, p.671-2.

18. Also the deeming clause brought twenty years after the promulgation of the Act itself in 1994 is, on the face of it, against the object and scheme of the original Act itself. The purpose of the original Act was only to validate and regularize the adhoc appointment of the employees from the date of its promulgation whereas the subsequent deeming clause goes much beyond the scheme of the original Act, therefore, it has to be accepted to the extent which it is inconformity with the original Act. In support of this view reference can be made to the judgment dated: 23.05.2018 of the Honourable Supreme Court in *Civil Appeal Nos. 731 to 733 of 2016 and CMA Nos. 723 & 3199 of 2018.*'

The learned Mr. Bhatti nor the learned Additional Advocate Generals of Sindh have been able to persuade us that the impugned judgment of the Tribunal did not accord with the Constitution or the decisions of this Court cited in the impugned judgment, including that of *Muhammad Mubeen-us-Salam* and the unreported decision, which decision too is now reported<sup>10</sup>. Therefore, these appeals are dismissed with costs. Consequently, Civil Miscellaneous Appeal No. 103 of 2022 is disposed of.

Judge

Judge

Judge

Islamabad:  
20.09.2022  
(M. Tauseef)

Approved for Reporting

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<sup>10</sup> *Mudassar Shah Termizi v Peshawar High Court* (2021 SCMR 116).