THE FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Appellate Jurisdiction)

Present
Justice Syed Hasan Azhar Rizvi
Justice Muhammad Karim Khan Agha

Civil Appeal No. 103-K/2024
(on appeal from the judgment dated 04.06.2021 passed by the High Court of Sindh in C.P. No.D-1859 of 2017)

Muhammad Qutub-ud-Din & others .....*Appellant(s)*

Versus

Province of Sindh through Chief Secretary Government Sindh & others .....*Respondent(s)*

For the Appellants	:	Mr. Malik Muhammad Aqil Awan, Sr. ASC
For Respondents No. 1-2	:	Mr. Kafeel Ahmad Abbasi, Addl. AG Sindh
For Respondents No. 3-4	:	Mr. Muhammad Sarfaraz Ali Matlo, ASC *assisted by M/s Fayaz Ali Metlo & Athar Hussain, Advocates* Mrs. Abida Parveen Channar, AOR
Date of Hearing	:	26.03.2026 (Judgement Reserved)

JUDGMENT

Syed Hasan Azhar Rizvi, J.— This appeal, under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ('**Constitution**'), filed with the leave of the Court, is directed against the judgment dated 04.06.2021 ('**impugned judgment**') passed by the High Court of Sindh, Karachi ('**High Court**'), whereby the Constitution Petition No. D-1859/2017 filed by the appellants and the *proforma* respondents under Article 199 of the Constitution was dismissed. Through the said petition, they challenged the appointment of the respondent No.4 ('**private respondent**') on a contract basis, as well as the legality of the orders dated 01.03.2017 (though mentioned as 23.02.2017), which retrospectively regularized his service, making him senior to the appellants and the *proforma* respondents and the subsequent order dated 17.03.2017 (both

orders hereinafter referred to as '**impugned orders**'), resulting in his posting as Director (BS-18) at the Defence/Clifton Directorate, Karachi.

2. The stance of the appellants, as set out in the petition, is, *briefly*, that the private respondent was appointed in the Sindh Employees' Social Security Institution ('**SESSI**) as a Social Security Officer (BS-16) on a contract basis for a period of two years vide order dated 05.09.2002. Subsequently, his contractual services were extended from time to time and, lastly, for a further period of one year vide office order dated 06.09.2006. Thereafter, his services were regularized with immediate effect from 31.03.2007 vide order dated 07.04.2007. At that time, he did not raise any objection; however, in the year 2013, after a lapse of about six years, he made a representation to the Chairman, Governing Body of the SESSI, seeking retrospective regularization and seniority with effect from 05.09.2002, i.e., the date of his initial appointment on a contract. Later, he filed Constitution Petition No. D-528/2016 before the High Court. Although the present appellants were not impleaded as parties in the said petition, they subsequently joined the proceedings through an intervenor application. The High Court, vide order dated 06.05.2016, disposed of the said petition with a direction to the Governing Body of the SESSI to decide the representation of the private respondent within two months. The Governing Body of the SESSI, instead of deciding the representation itself, constituted a Committee for making appropriate recommendations. Consequently, the services of the private respondent, on the recommendation of the said committee, were regularized with effect from 05.09.2002, and he was also placed senior to all the appellants. Subsequently, the private respondent was posted as Director (BS-18) at the Defence/Clifton Directorate, Karachi, vide the impugned order dated 17.03.2017. Being aggrieved, the appellants and the *proforma* respondents filed a Constitution Petition before the High Court; however, the same was dismissed through the impugned judgment. Hence, this appeal, with the leave of the Court.

3. It is relevant to mention here that this Court was established through the Constitution (Twenty-Seventh Amendment) Act, 2025, with exclusive jurisdiction to hear appeals arising from judgments, decrees, or final orders of the High Courts passed under Article 199 of the Constitution, subject to the grant of leave under Article 175F(1)(c) of the

Constitution. Consequently, the Supreme Court ceased to have jurisdiction over such matters, and the present case, in which leave was granted by the Supreme Court vide order dated 15.10.2024, being of that nature, automatically stood transferred to this Court by virtue of Article 175F(2) of the Constitution. Whereafter it was fixed before this Bench by the Hon'ble Chief Justice of the Federal Constitutional Court for adjudication in accordance with law.

4. The learned counsel for the appellants, while reiterating the contents of the petition, argued that the appointment of the private respondent on a contractual basis, as well as the subsequent regularization of his services, was wholly illegal. The private respondent was already serving as a BS-12 employee in the Services, General Administration and Coordination Department (SGA&CD) of the Government of Sindh, yet he was appointed on a contract basis in BS-16 in the SESSI, without advertisement of the post. Therefore, such an appointment could, at best, be treated as a deputation, rendering the private respondent liable to repatriation to his parent department. The appellants were appointed on a regular basis in the year 2004, whereas the service of the private respondent was regularized in the year 2007. Under Regulation 9(3) of the Regulations of 2006, the seniority of a member of the service is to be reckoned from the date of his regular appointment. Applying the principle embodied in the said regulation, the appellants were senior in service to the private respondent. However, the impugned orders were passed in clear violation of the said regulation, whereby the service of the private respondent was regularized retrospectively. The learned counsel further contended that the constitution of the Committee by the Governing Body of the SESSI was itself contrary to the order dated 06.05.2016 passed by the High Court, whereby the Governing Body alone had been directed to decide the representation of the private respondent. However, solely to accommodate the private respondent, the Governing Body unlawfully constituted the said Committee without any legal authority. Consequently, any recommendation made by the Committee or any order passed on its basis was without lawful authority and conferred no legal right or title upon the private respondent. It was also argued that the Governing Body of the SESSI, without independently applying its mind to the matter, mechanically approved the recommendations of the Committee and

unlawfully granted retrospective seniority to the private respondent, despite having no legal authority under the law to do so. Lastly, the High Court failed to properly appreciate both the factual and legal aspects of the case and erred in dismissing the Constitution Petition. The impugned judgment, according to the learned counsel, completely overlooked the settled principle that seniority is to be reckoned from the date of regular appointment and not from the date of initial appointment on a contract basis. On these grounds, it was prayed that the impugned judgment, as well as the impugned orders, be set aside and the appellants be placed above the private respondent in the seniority list.

5. The Learned Addl. A.G., Sindh, representing the respondent Nos. 1 & 2, supported the impugned judgment and submitted that the private respondent had continuously served against a permanent post from the date of his initial contractual appointment and had fulfilled all codal formalities required for regular appointment. Thus, the Governing Body of the SESSI was fully competent to regularize his services retrospectively from the date of his initial appointment. Regulation 9(4) merely prohibits retrospective regularization of *ad hoc* employees and does not bar retrospective regularization of contractual employees appointed against sanctioned permanent posts. Lastly, submitted that the impugned judgment is well-reasoned, based on a correct appreciation of facts and law, and does not suffer from any legal infirmity warranting interference by this Court. He, therefore, prayed that the appeal may be dismissed.

6. The learned counsel for the respondent Nos. 3 and 4, while relying upon the written synopsis filed through C.M.A No.10-K/2026, argued that the services of the appellants and the private respondent are governed by the principle of *master and servant*, as the SESSI does not have statutory service rules or regulations. Therefore, the matter does not fall within the constitutional jurisdiction of the High Court under Article 199 of the Constitution and, on this ground alone, the petition was not maintainable. The appellants had failed to avail the alternate remedy available under the Sindh Employees' Social Security Institution Service Regulations, and, therefore, the petition was also liable to dismissal on this count. The temporary service and the seniority of the appellants had been reckoned from the dates of their initial appointments, whereas the private respondent had been denied similar treatment. Consequently, the

private respondent submitted a representation before the SESSI. The Governing Body of the SESSI, in compliance with the above order dated 06.05.2016 of the High Court, decided his representation in his favour after affording full opportunity of hearing to the parties. Therefore, the appellants cannot now re-agitate the same issue. The learned counsel further argued that Regulation 9(4) does not prohibit retrospective regularization of a contractual employee appointed against a permanent post after fulfillment of all codal formalities for regular appointment. The said regulation only bars retrospective regularization of *ad hoc* employees. Therefore, the Governing Body of the SESSI lawfully regularized the continuous contractual service of the private respondent from the date of his initial appointment. Furthermore, the grant of seniority to the private respondent from the date of his initial appointment is consistent with the principles laid down by a five-member Bench of the Supreme Court of Pakistan in 2014 SCMR 1289. Lastly, the appellants have initiated the present proceedings with *mala fide* intention and out of personal vendetta against the respondents No.3 and 4; therefore, the appeal is liable to be dismissed with costs.

7. We have heard the learned counsel for the parties at considerable length and have carefully examined the material available on the record with their able assistance. At the very outset, the respondents raised a preliminary objection to the maintainability of the Constitution Petition before the High Court on the ground that the services of the appellants and the private respondent were governed by the principle of *master and servant*, as the SESSI did not possess statutory service rules or regulations. Consequently, according to the respondents, the matter did not fall within the constitutional jurisdiction of the High Court under Article 199 of the Constitution. However, the High Court erroneously held the said petition to be maintainable. The said finding of the High Court is liable to be set aside for being contrary to law. In our view, an objection relating to the maintainability of a petition is of foundational importance and warrants serious judicial consideration. It is, therefore, incumbent on a Court to *first* address such an objection by carefully examining the relevant constitutional and legal provisions, as well as the precedents governing the field, and thereafter record a reasoned finding regarding the maintainability of the proceedings before entering into the merits of the controversy.

8. In order to properly appreciate the controversy involved in the present case, it is necessary first to examine the statutory framework governing the SESSI. We find that initially an institution under the name and style of the 'Employees' Social Security Institution' was established under Section 3 of the *erstwhile* Provincial Employees' Social Security Ordinance, 1965 ('**the Ordinance**'), for the purpose of providing social security benefits to certain employees and their dependents in cases of sickness, maternity, employment injury, disability, or death, as well as for matters ancillary and incidental thereto. Under Section 4 of the Ordinance, the management and superintendence of the affairs of the said Institution were vested in a Governing Body, which, with the assistance of the Commissioner, was empowered to exercise all powers of the Institution under the said Ordinance. The composition of the Governing Body of the SESSI was provided in Section 5 of the Ordinance, according to which its members were to be appointed by the Federal or Provincial Government, as the case may be. Section 80 of the Ordinance further provided that the Governing Body may, subject to prior publication, make regulations by notification to regulate the matters enumerated therein. In exercise of the said powers, the Governing Body framed the Sindh Employees' Social Security Institution (Revised) Service Regulations, 2006 ('**Regulations of 2006'**) for the Province of Sindh.

9. Following the Constitution (Eighteenth Amendment) Act, 2010, the Province of Sindh re-enacted the aforesaid law in the form of the Sindh Employees' Social Security Act, 2016 ('**Act of 2016'**). The provisions of the Act of 2016 are substantially *pari materia* with those of the repealed Ordinance. Sections 3, 4, and 5 of the Act of 2016 provide for the establishment of a similar institution, namely, the SESSI, whose management, administration, and superintendence are vested in a Governing Body to be appointed by the Government of Sindh. It is relevant to mention here that through sub-section (1) of Section 86 of the Act of 2016, the provisions of the *erstwhile* Ordinance of 1965, insofar as they related to the Province of Sindh, were repealed. However, sub-section (2) of the same section protects the rules, regulations, notifications, and orders issued under the repealed Ordinance, with the clear mandate that the same shall continue to remain in force until altered, repealed, or amended by the competent authority. As the impugned orders pertain to a period subsequent to the promulgation of the Act of 2016, and in

response to a query made by the Court, the learned Addl. A.G., Sindh, apprised the Court that no fresh regulations have so far been framed by the Governing Body of the Institution. Therefore, the question of maintainability is to be examined within the above-discussed legal framework.

10. It is noted with great importance that the High Court, in para 7 to 10 of the impugned judgment, has adequately addressed the issue of maintainability and has categorically observed that although the Regulations of 2006 are non-statutory in nature, the Constitution Petition under Article 199 of the Constitution was nevertheless maintainable in view of the law laid down by the Supreme Court of Pakistan in *Pakistan Defence Officers' Housing Authority v. Lt. Col. Syed Jawaid Ahmed* (**2013 SCMR 1707**) and *Muhammad Rafi and another v. Federation of Pakistan and others* (**2016 SCMR 2146**). We are in complete agreement with the aforesaid observation of the High Court and affirm the same. The principle laid down in the above-noted judgments clearly establishes that the constitutional jurisdiction under Article 199 of the Constitution may be invoked where the act of a statutory authority is violative of service rules or regulations, even if such regulations are non-statutory in nature. No doubt, the SESSI, being a statutory body, is performing public functions under the above-noted legal framework. Therefore, the alleged arbitrary exercise of authority by the SESSI, allowing a retrospective regularization to the private respondent and placing him above the employees recruited on a permanent basis during his contractual employment, is well within the settled scope of constitutional jurisdiction. Furthermore, the respondents have failed to demonstrate any jurisdictional defect, lack of competence, or violation of any threshold requirement that would render the Constitution Petition non-maintainable.

11. As regards the objection concerning non-availing of an alternate remedy by the appellants, it may be observed that the mere existence of an alternate remedy does not constitute an absolute bar to the invocation of constitutional jurisdiction under Article 199 of the Constitution. Rather, it is merely one of the factors to be taken into consideration by the High Court while exercising its discretionary jurisdiction. The rule regarding exhaustion of alternate remedies is essentially a rule of policy, convenience, and judicial restraint, and not one

of rigid or inflexible application. It is relevant to mention here that a sub-constitutional legislation cannot curtail, override, or whittle down the powers conferred upon the High Court under the Constitution. In this regard, reference may beneficially be made to the judgment rendered by the Supreme Court of Pakistan in *Airport Support Services v. The Airport Manager, Quaid-e-Azam International Airport* (**1998 SCMR 2268**). Apart from the above, the constitutional jurisdiction under Article 199 of the Constitution can validly be invoked where fundamental rights are infringed, where the alternate remedy is neither adequate nor equally efficacious, where the impugned action is *coram non judice* or without lawful authority, or where the proceedings suffer from mala fide and jurisdictional defects or violation of the principles of natural justice. In the present case, the controversy relates to the determination of seniority and the alleged conferment of retrospective seniority in violation of the governing statutory framework, thereby adversely affecting the vested rights of the appellants. The matter, therefore, involved substantial questions of law touching upon the legality of administrative action and the enforcement of constitutional guarantees of equality and fair treatment in service matters. In such circumstances, the Constitution Petition filed by the appellants and *proforma* respondents before the High Court under Article 199 of the Constitution was fully maintainable. Consequently, the objections regarding maintainability are misconceived and are hereby rejected.

12. Coming to the merits of the case, it is a matter of record that the private respondent, along with thirteen others, was appointed in the SESSI as a Social Security Officer (BS-16) on a two-year extendable contract vide order dated 05.09.2002. Thereafter, their contractual services were extended from time to time and, lastly, for a further period of one year vide office order dated 06.09.2006. Ultimately, their services were regularized with effect from 31.03.2007 vide order dated 07.04.2007. Later, the five out of the above thirteen Social Security Officers (BS-16), who had been appointed along with the private respondent through the same notification, as well as another officer, namely Rizwan Ahmed Saeed, who had been appointed on a contract basis on 19.09.2002, filed representations seeking regularization of their services from the dates of their initial contractual appointments on the ground that their seniority had been adversely affected. Upon receipt of the said representations, the

SESSI, vide letter dated 22.05.2009, sought legal opinion from M/s Abraham & Sarwana, Legal Advisors, SESSI, on the issue of regularization and determination of seniority of the above officers. The said legal advisors, vide letter dated 24.07.2009, opined that seniority of these officers could only be reckoned from the dates of their regularization in service and not from the dates of their initial appointments on contract. The relevant paragraph of the said opinion is reproduced hereunder for ease of reference:

> *'4) As far as present claims of Social Security Officers are concerned, we do not find any merit in their claims. The services of above Social Security Officers are governed under SESSI (Revised) Regulations, 2006. The Social Security Officers are bound by Clause 7 of their appointment orders, which says their services will be governed by Rules, Regulations and standing instructions of SESSI, which are enforced from time to time. Regulation 9 of SESSI (Revised) Regulations 2006 speaks of 'Seniority' of the cadre and scales of officers and officials of SESSI employees.* ***Clause (3) of Regulation 9 provides that 'The seniority of a member of the service shall be reckoned from the date of his regular appointment'.*** *The above Social Security Officers were régularized on 31.03.2007 therefore,* ***in view of the above Regulations their seniority can only be considered from the date of their regularization in service i.c. 31.03.2007 and not from their initial appointment which was on contract basis****.'*

Emphasis is added.

Based on the above opinion, the SESSI, vide Notification dated 08.08.2009, rejected their representations as being not maintainable under the law.

13. At the relevant time, the private respondent neither joined his colleagues in filing the aforesaid representations nor raised any objection against the regularization of his services with immediate effect from 31.03.2007. However, subsequently, on 27.01.2016, after more than nine years, he filed a constitution petition before the High Court, seeking regularization of his services with effect from the date of his initial contractual appointment, i.e., 05.09.2002, on the ground that his representation dated 07.03.2013, submitted before the competent authority, had remained undecided despite the lapse of considerable time. Although the present appellants were not initially impleaded as parties in the said petition, they later joined the proceedings by filing an application for intervention, as the relief sought by the private respondent was likely to adversely affect their vested seniority rights and service interests. The

High Court, vide order dated 06.05.2016, disposed of the said petition with the following directions to the Governing Body of the SESSI:

> *'The petition is disposed of with the directions that when the Governing Body will decide the representation of the petitioner* ***after hearing him, the opportunity of hearing will also be afforded to the interveners*** *and due consideration will also be given to the order passed by this Court in C.P. No. D-2190/2012 which was affirmed by the Hon'ble Supreme Court in CPLA No. 287-K/2012 vide order dated 2.11.2012. The Governing Body shall decide the matter within two months. A copy of this order may be communicated to the Commissioner, Sindh Employees Social Security Institution, Karachi for compliance. All pending applications are also disposed of.*

Emphasis is added.

14. In compliance with the above directions, the Governing Body of the SESSI, in its 144th meeting held on 23.09.2016, constituted a three-member committee to examine the matter and make recommendations in light of the aforesaid directions of the High Court. The Committee subsequently submitted its report dated 16.01.2017 and made the following recommendations:

> '**RECOMMENDATION**:
>
> *The Committee recommends that* ***the appointment of Mr. Nadir Hussain Kanasro [the private respondent] as Social Security Officer was made on 12.09.2002 after completing all codal formalities i.e. age, requisite qualification, experience, against the permanent post on contract basis may be considered and treated as regular appointment.*** *He may also be considered senior to the nine interveners out of ten interveners who were appointed later on in 2004, on purely temporary basis, while violating the codal formalities i.e. age, requisite qualification and experience etc.*
>
> *The Committee further recommends that since the interveners have been appointed in violation of the codal formalities, i.e. age, requisite qualification, experience etc. Detailed enquiry may be conducted after verification of educational qualification from concerned quarters, action may be taken against the intervener in the light ofabove enquiry report as per Law/Rules.*
>
> *The report is accordingly placed before Governing Body (SESSI) for the consideration & approval.'*

Emphasis is added.

The above recommendations of the committee were placed before the Governing Body of the SESSI at its 145th meeting held on 28.01.2017, and were approved. Thereupon, the service of the private respondent was regularized with effect from 12.09.2002 by issuing the impugned order dated 01.03.2017, resulting in his posting as Director (BS-18) at the Defence/Clifton Directorate, Karachi.

15. The core legal question requiring determination is whether the private respondent could lawfully be granted retrospective regularization by counting the earlier period of his contractual service and, on that basis, be assigned seniority over the appellants and other employees who had been appointed on a regular basis during the subsistence of his contractual tenure. Before proceeding further, it would be relevant to observe here that where a matter is governed by specific statutory or regulatory provisions, the rights and obligations of the parties are to be determined strictly in accordance with the framework of such law. Thus, to resolve the aforesaid question, recourse must *first* be made to the relevant statutory framework governing the service structure of the SESSI, namely, the Regulations of 2006, which describe the appointing authority, regulate the method of recruitment, pay and allowances, and other terms and conditions of services of the officers and servants of the SESSI. Recourse to the general principles of service jurisprudence or judicial precedents may only be made where the above Regulations are silent, ambiguous, or do not expressly provide for the matter in issue. The Regulations of 2006 clearly prescribe the appointing authority, the mode and method of recruitment, and the manner in which the seniority of the officers and the servants of the SESSI is to be determined. Since the controversy in hand revolves around the post of Social Security Officer (BS-16), only those provisions of the Regulations of 2006, which are relevant to the said post and necessary for adjudication of the above question, require consideration. The said provisions of the Regulations of 2006 are as follows:

> '***4. APPOINTING AUTHORITY:***
>
> *Appointments to the Service [SESSI] shall be made by the authority mentioned in column 6 of Appendix- 'A' in respect of each post. In case such authority is the Governing Body, it may delegate powers to the Commissioner and in case such authority is the Commissioner, he may delegate his powers to an officer not below the rank of BS-18.*
>
> ***5. METHOD OF RECRUITMENT:***
>
> *(1) Recruitment to the service [SESSI] shall be made by the method specified in column 4 of Appendix-'A' in respect of each post.*
>
> *(2) Appointment by initial recruitment and promotion to the posts in BS-5 and above shall be made on the recommendations of respective Selection Board/ DPC.*
>
> *(3) Initial recruitment to the posts specified in Appendix-'A' shall be made on merit according to rural/ urban quota at the ratio of 60:40 respectively.*

....

....

(6) Any member of the Service [SESSI] may be required by the appointing authority to appear in a test as and when it may so require during probation to prove his competence in respect of the post which he may be holding.

8. PROBATION:

(1) A person appointed to the service against a substantive vacancy shall remain on probation for a period of two years, if appointed by initial recruitment, and for a period of one year, if appointed by promotion.

9. SENIORITY

(1) There shall be a separate seniority list in each cadre and scale of officers and officials.

(2) The appointing authority shall, in the month of January every year, prepare or, as the case may be, revise the seniority list under sub-clause (1) above.

*(3) The seniority of a member of the service shall be reckoned **from the date of his regular appointment.***

(4) No appointment made on adhoc basis shall be regularized retrospectively.'

APPENDIX- 'A'
(See Regulations 3, 4, 5, 6 & 7)

Serial No.	Nomenclature of the Post	Minimum Qualification prescribed for appointment by initial recruitment	Method of recruitment	Minimum and maximum age prescribed for appointment by initial recruitment	Appointing Authority in case of initial recruitment
1	2	3	4	5	6
22	Social Security Officer BS-16	M.A. 2nd class in Social Science, having three years experience.	i) 50% by initial recruitment ii) 50% by promotion (40% from Assistants and 10% from Stenographers or Graduate Data Entry Operators having atleast 10 years service) on seniority-cum-fitness basis.	20-35 years	Commissioner

16. The above-quoted Regulations unequivocally prescribe the competent appointing authority, the minimum qualifications, and the age limit for appointment to the post of Social Security Officer (BS-16). The prescribed mode of recruitment to the said post is through both initial recruitment and promotion. We are here concerned with the mode of appointment through the '*initial recruitment*' only. In civil service jurisprudence, the expression '*initial recruitment*' refers to the *first* entry of a person into service, irrespective of the nature of such appointment. Such recruitment may be on a contractual, *ad hoc*, temporary, or officiating basis and does not, *by itself*, confer upon the employee the status of a regular employee. On the other hand, a '*regular appointment*' means an

appointment made in accordance with the prescribed law, rules, or regulations governing recruitment to a post, after fulfillment of all codal formalities and against a sanctioned post, thereby conferring substantive status upon the employee in service. The distinction between the aforesaid expressions assumes considerable significance in matters relating to seniority, promotion, and other service benefits.

17. In the present case, there is no dispute regarding the qualification or age of the private respondent, nor has the competence of the appointing authority been questioned. The controversy is confined solely to determining the seniority of the private respondent, whose services were retrospectively regularized as of the date of his initial contractual appointment. In this regard, Regulation 9(3) of the Regulations of 2006 assumes central importance, as it unequivocally provides that '*the seniority of a member of the service shall be reckoned from the date of his regular appointment.*' A plain reading of the aforesaid provision leaves little room for ambiguity. The Regulation does not make the date of initial appointment, contractual service, or *ad hoc* service the basis for the determination of seniority; rather, it expressly links seniority with the date of regular appointment. It is a settled principle of interpretation that where the language of a statutory provision is plain and unambiguous, the same must be given effect in its ordinary meaning, and no interpretation contrary thereto can be imported by implication.

18. It is further added that the expression '*regular appointment*' employed in the above Regulation carries a definite legal connotation in service jurisprudence and is clearly distinguishable from a '*contractual appointment*'. The two expressions are neither synonymous nor interchangeable. A contractual appointment, by its very nature, is tenure-based and does not confer substantive status in service unless and until the employee is regularly appointed in accordance with law. Furthermore, a contractual appointment is governed by the terms and conditions embodied in the contract executed between the employer and the employee, whereas a regular appointment is regulated by the applicable service laws and the rules or regulations framed thereunder. The applicability of either regime depends upon the nature and terms of the appointment itself. In fact, the employees appointed on a contractual basis constitute a distinct class and do not become part of an integrated service

governed by the law. A clear line of distinction, therefore, exists between service rendered under the contract and service rendered under the rules. Reference in this regard may be made to *Major® Nisar Ali v. Pakistan Atomic Energy Commission and another* (**2004 PLC (C.S.) 758**), wherein the Supreme Court of Pakistan has made similar observations. Therefore, it may safely be concluded that a contractual appointment cannot be equated with a regular appointment, and the period of service rendered on a contractual basis cannot be treated as regular service in the absence of any express provision of law to that effect.

19. Similarly, the grant of retrospective seniority to an employee must have a clear sanction of law. In the absence of any express statutory provision, the seniority of an employee cannot be reckoned from the date of his initial contractual appointment; rather, it is to be determined from the date on which such employee is appointed on a regular basis. In this regard, reference may aptly be made to *Syed Muddasar Shah Termizi and others v. Peshawar High Court, Peshawar through Registrar, Peshawar and others* (**2021 SCMR 116**). Neither the Regulations of 2006 nor any other provision brought to our notice authorizes the Governing Body of the SESSI to confer retrospective seniority upon the private respondent. In the absence of any such enabling provision, the Governing Body of the SESSI could not, through an administrative decision, override, dilute, or circumvent the express mandate of Regulation 9(3). Under the law, the administrative discretion must operate strictly within the framework of the governing rules and regulations and cannot be exercised in derogation thereof. Therefore, the retrospective alteration of seniority, adversely affecting employees who had already been appointed on a regular basis during the said contractual period, not only offends the plain language of Regulation 9(3) but also violates the settled principles of fairness, certainty, and legitimate expectation governing the service structure. Seniority, once validly accrued under the applicable rules or regulations, constitutes a valuable civil right, which cannot be disturbed except through a lawful procedure sanctioned by the relevant statutory framework.

20. The learned counsel for the respondents No.3 and 4 candidly conceded that no express provision exists in the Regulations of 2006 which empowers the Governing Body of the SESSI to regularize the services of

the private respondent retrospectively. He, however, contended that such authority could be inferred from Regulation 9(4), which merely prohibits retrospective regularization in cases of ad hoc appointments. According to the learned counsel, since the said Regulation is silent with respect to contractual appointments, the Governing Body of the SESSI was competent to grant retrospective regularization to the private respondent from the date of his initial contractual appointment. We are unable to subscribe to the aforesaid contention. Even if, for the sake of argument, it is assumed that Regulation 9(4) impliedly authorizes retrospective regularization in cases other than *ad hoc* appointments, such implied authority cannot be stretched to confer retrospective seniority in violation of Regulation 9(3). The reason is obvious: Regulation 9(3) specifically and unequivocally provides that the seniority of a member of the service shall be reckoned from the date of his regular appointment. Thus, while Regulation 9(4) deals with the permissibility or otherwise of retrospective regularization, Regulation 9(3) exclusively governs the determination of seniority. Both provisions operate in distinct fields and must be read harmoniously. A harmonious construction of these two provisions leads to the inescapable conclusion that even if retrospective regularization is assumed to be permissible in certain circumstances, such regularization does not automatically entitle an employee to retrospective seniority unless the Regulations expressly so provide. Any other interpretation would render Regulation 9(3) nugatory and defeat the clear legislative intent underlying the said provision.

21. It is also important to note that the regularization of a contractual employee essentially amounts to a fresh induction into the stream of regular service. Prior to such regularization, the employee remains outside the regular *cadre* and does not possess any substantive right in the service, including any vested right relating to seniority. As is evident from the seniority lists dated 01.01.2005 and 07.06.2006, the name of the private respondent did not appear therein. However, his name surfaced for the first time in the seniority list dated 25.02.2008 at Serial No. 86, followed by the seniority list dated 14.01.2009 at Serial No. 70, after his formal regularization from 31.03.2007. These admitted facts clearly affirm that SESSI itself was fully cognizant of the legal position and had rightly treated the private respondent as being outside the regular *cadre* prior to his regularization. Had the private respondent been

considered a regular employee from the date of his initial contractual appointment, his name would naturally have appeared in the earlier seniority lists as well. The omission of the private respondent's name from the earlier seniority lists is, therefore, a clear acknowledgment on the part of the SESSI that the private respondent was not borne on the regular establishment at the relevant time.

22. On the other hand, the appellants, as borne out from the record, were duly recommended for appointment as Social Security Officers (BS-16) by the Departmental Selection Committee vide its minutes of meeting dated 26.02.2004, which culminated in the issuance of formal appointment letters dated 05.03.2004. Consequently, the names of the appellants appeared in the very next seniority list dated 01.01.2005, circulated vide letter dated 09.02.2005, and thereafter in the final seniority list dated 07.06.2006, circulated vide letter dated 13.06.2006. Their continuous placement in the seniority lists clearly shows that the SESSI itself treated them as regular members of the cadre from the very inception of their appointments. Furthermore, the contents of the appointment letters issued to the appellants, when compared with the appointment order of the private respondent, lend further support to the case of the appellants that their appointments were made on a regular basis. The appointment letters of the appellants do not contain the expression '*on contract basis*,' whereas the appointment order of the private respondent specifically describes his appointment as contractual in nature. It is also pertinent to mention that the Committee constituted by the Governing Body of the SESSI for making recommendations regarding the seniority of the private respondent, in its report dated 16.01.2017, observed that the appointments of the appellants were made on a purely temporary basis and allegedly in violation of codal formalities, such as age, requisite qualification, and experience, etc., and accordingly recommended a detailed inquiry into the matter. However, the learned counsel for respondents No. 3 and 4 failed to produce any material on the record to show that any such inquiry was ever conducted pursuant to the recommendations of the Committee, despite the same having been approved by the Governing Body of the SESSI.

23. In the absence of any inquiry report, adverse finding, or order declaring the appointments of the appellants to be illegal or irregular, the

mere observations made by the Committee remain tentative and inconsequential in the eyes of the law. Thus, an employee cannot be deprived of his vested service rights on the basis of unsubstantiated allegations or preliminary observations unsupported by any lawful determination. Had there been any defect in the appointments of the appellants, the competent authority was required to initiate appropriate proceedings and pass a speaking order after affording them an opportunity of hearing. No such course was ever adopted. Moreover, the uninterrupted continuation of the appellants in service, their inclusion in successive seniority lists, and the absence of any challenge to their appointments for a considerable period constitute strong circumstances affirming the legality and regular nature of their appointments. These official acts and records carry a presumption of correctness and validity unless rebutted through cogent evidence, which is completely lacking in the present case. The above-noted facts, when considered cumulatively, unmistakably establish that the appellants were appointed in the SESSI on a regular basis during the period when the private respondent was still serving on a contractual basis. Consequently, the appellants were lawfully entitled to rank senior to the private respondent in the seniority list.

24. Surprisingly, the SESSI had already declined similar relief regarding retrospective regularization from the date of initial contractual appointment, vide order dated 08.08.2009, to five other Social Security Officers (BS-16) who had been appointed along with the private respondent through the same notification. The SESSI, however, has failed to produce any material on the record to show that these similarly placed employees were subsequently granted retrospective seniority in the same manner as the private respondent. This selective and differential treatment, without any lawful basis or reasonable classification, clearly reflects arbitrariness in the exercise of administrative authority. Such inconsistent application of policy within the same organization is not only discriminatory in nature but also offends the constitutional guarantees of equality before law, equal protection of law, and safeguards against discrimination in services embodied in Articles 4, 25, and 27 of the Constitution. In these circumstances, the conferment of retrospective seniority upon the private respondent, while denying the same benefit to other similarly placed employees, lacks lawful justification, suffers from discrimination, and is therefore liable to be disregarded for being contrary to the scheme of the

Regulations of 2006 as well as the constitutional principles governing fairness and equality in public service.

25. The High Court, however, failed to properly appreciate the above legal position and erroneously concluded that the Governing Body of the SESSI had rightly approved the recommendations of the Committee constituted pursuant to the order dated 06.05.2016 passed by the High Court, on the premise that there existed no express provision in the law debarring the regularization of the contractual service of an employee from the date of his initial appointment. With utmost respect, the above approach of the High Court is legally unsustainable and contrary to the Regulations of 2006. The High Court appears to have treated the matter of retrospective regularization and grant of seniority from a back date as a mere procedural issue, proceeding on the assumption that anything not expressly prohibited by law is deemed permissible. However, such an approach overlooks the distinction between administrative discretion and statutory entitlement. Seniority is not a mere administrative formality; rather, it is a valuable civil right having a direct bearing upon future promotions, career progression, eligibility for higher posts, and other service benefits. Therefore, such a right cannot be conferred merely through an administrative decision in the absence of a clear statutory provision authorizing the same.

26. The learned counsel for the respondent Nos. 3 and 4, to support his case, has placed reliance on the judgment of the Supreme Court of Pakistan in *Muhammad Aslam Awan, Advocate, Supreme Court v. Federation of Pakistan and others* (**2014 SCMR 1289**). It has also been noted that the conclusion drawn by the High Court in the impugned judgment was substantially based upon the above judgment also. Being so, we gave our anxious consideration to this judgment. On perusal, it is found that this judgment pertains to the question of *inter se* seniority of the Additional Judges and Permanent Judges of the High Court on the constitutional plan. No civil service dispute relating to civil servants was directly under consideration before the Court in that case. However, while deciding the controversy, the Court observed that: '*We find that even in service matters, while considering the seniority of civil servants, the seniority is reckoned from the date of initial appointment and not from the date of confirmation or regularization.*' This observation of the Supreme

Court has been reproduced by the High Court in paragraph 18 of the impugned judgment. Relying upon the aforesaid observation, the High Court proceeded to dismiss the petition through the impugned judgment. It has been observed that the aforesaid observation was made by the Supreme Court without reference to any particular service rules, statutory framework, or category of appointment. More importantly, the Supreme Court did not specify whether the '*initial appointment*' referred to an appointment made on a contractual basis or a regular appointment made in accordance with the relevant rules and regulations. Thus, the factual and legal context in which the above observation was made is materially distinguishable from the controversy involved in the present case.

27. Moreover, the aforesaid remarks were merely incidental or passing observations, as the issue of retrospective seniority arising out of initial contractual civil service was neither directly in issue nor substantially argued before the Court. It is a settled principle of law that only the *ratio decidendi* of a judgment, and not every general observation made therein, constitutes a binding precedent within the contemplation of Article 189 of the Constitution. The observations made *sub silentio* or *obiter dicta*, particularly on issues not directly arising for determination, cannot be treated as laying down an authoritative principle of law applicable in all situations irrespective of the governing statutory framework. Reference in this regard may be made to *Sh. Muhammad Rafique Goreja and others v. Islamic Republic of Pakistan and others* (**2006 SCMR 1317**) and *Sindh High Court Bar Association through its Secretary and another v. Federation of Pakistan through Secretary, Ministry of Law and Justice, Islamabad* (**PLD 2009 SC 879**). Therefore, the reliance placed by the High Court upon the aforesaid judgment was misconceived and misplaced. We are, therefore, of the firm view that, in the present case, the High Court, while rendering the impugned judgment, failed to properly comprehend the intent and object of the aforesaid laws and, instead, misconstrued and misinterpreted the same, thereby resulting in a miscarriage of justice. Consequently, the impugned judgment, having been rendered without due consideration of material available on record, cannot be sustained in law and is liable to be set aside.

28. In view of the foregoing discussion, and upon a comprehensive reappraisal of the peculiar facts and circumstances of the case, we hold, declare, and direct as under: --

a) that a contractual appointment cannot be equated with a regular appointment, and the period of service rendered on a contractual basis cannot be treated as regular service in the absence of an express statutory provision to that effect;

b) that an employee, prior to regularization, remains outside the regular cadre and does not acquire any substantive right in the service, including any vested right relating to seniority;

c) that seniority is ordinarily to be reckoned from the date of regular appointment and not from the date of initial contractual, *ad hoc*, or officiating appointment, unless the governing law expressly provides otherwise. Consequently, the impugned orders dated 01.03.2017 and 17.03.2017 are hereby set aside;

d) that the appellants were appointed in the SESSI on a regular basis during the period when the private respondent, namely Nadir Hussain Kanasro, was still serving on a contract and, therefore, the appellants were lawfully entitled to rank senior to the private respondent in the seniority list; and

e) that the SESSI is directed to issue a revised seniority list of the parties within sixty days from the date of this judgment, strictly in accordance with the declarations made hereinabove.

Accordingly, the appeal is allowed in the terms noted above and the impugned judgment dated 04.06.2021, passed by the High Court of Sindh, is set aside with no order as to costs.

Judge

Judge

Announced in open Court
on 21/05/2026, at Karachi.

APPROVED FOR REPORTING
*Ghulam Raza/**