

THE FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Justice Syed Hasan Azhar Rizvi
Justice Muhammad Karim Khan Agha
Justice Rozi Khan Barrech

C.P.L.A. No. 4444/2023

*(against the order dated
24.10.2023, passed by the
Islamabad High Court,
Islamabad in W.P. No.
1980/2022)*

*Pakistan Telecommunication Company Ltd,Petitioner(s)
Islamabad through its G.M.*

Versus

Abdul Ghafoor and othersRespondent(s)

For the Petitioner(s) : Mr. Shahid Anwar Bajwa, ASC
alongwith Mr. Salman Zafar, EVP (Legal),
Mr. Raheel Zafar, GM (Legal) and
Mr. Nauman Ahmad, Manager (Legal)

For the Respondent(s) : N.R.

Date of Hearing : 03.06.2026

JUDGMENT

Syed Hasan Azhar Rizvi, J.— Pakistan Telecommunication Company Ltd. (**‘petitioner’**), through the instant petition filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 (**‘Constitution’**), has challenged the judgment dated 24.10.2023 (**‘impugned judgment’**) passed by the Islamabad High Court, Islamabad (**‘High Court’**), whereby its constitutional petition instituted under Article 199 of the Constitution, assailing the legality of the order dated 20.01.2022 passed by the Full Bench of the National Industrial Relations Commission (**‘NIRC’**) and the order dated 13.04.2021 passed by the Member, NIRC (hereinafter collectively referred to as the **‘impugned orders’**), was dismissed.

2. The background of the present controversy is that the respondent No. 1, Abdul Ghafoor (**‘private respondent’**), on 28.07.1992, was employed by the petitioner as a Telephone Operator, allegedly on a temporary basis. On 01.06.2010, he brought his grievance to the notice of

the petitioner by serving a written notice, wherein he asserted that, since the commencement of his employment, he had satisfactorily completed the probationary period of ninety days prescribed by law and had continued to serve the petitioner without any break. He, therefore, claimed that he was entitled to be treated as a permanent workman and requested the grant of all benefits and facilities available under the law to such a workman. As his grievance remained unaddressed, the private respondent filed a grievance petition on 18.06.2010 under Section 37 of the Punjab Industrial Relations Act, 2010 (**'Act of 2010'**), before the provincial Labour Court. The said petition was accepted by the Labour Court vide order dated 18.05.2011, whereby the petitioner was directed to regularize the services of the private respondent under the Basic Scale Scheme with effect from the date of his initial appointment. Being aggrieved by the said order, the petitioner filed an appeal under Section 47 of the Act of 2010 before the Labour Appellate Tribunal. During the pendency of the appeal, a new federal statute, namely the Industrial Relations Act, 2012 (**'Act of 2012'**), came into force. In view of this development, the appeal was transferred to the Full Bench, NIRC, for the decision on the merits. The Full Bench, NIRC, vide order dated 28.10.2019, accepted the appeal; however, it remanded the matter to a Single Member, NIRC, for decision afresh. Upon remand, the grievance petition was accepted by the Single Member, NIRC and an appeal filed by the petitioner under Section 58 of the Act of 2012 against the said order was dismissed by the Full Bench, NIRC vide the impugned orders respectively. Later, a constitutional petition filed by the petitioner challenging the impugned orders was also dismissed by the High Court through the impugned judgment. Hence, the present petition.

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, 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. Learned counsel for the petitioner contends that the impugned judgment and orders suffer from serious legal infirmities. He submits that, because the private respondent was appointed to temporary work, he had no right to seek benefits payable to a permanent workman. Mere continuation in service for a long period does not confer a vested right to be considered a permanent workman. It is further argued that the claim was raised after an inordinate and unexplained delay of nearly eighteen years and was, therefore, barred by laches. Learned counsel also submits that the NIRC exceeded its jurisdiction by directing that the private respondent be treated as a permanent workman from the date of initial appointment and by granting consequential benefits in the absence of any statutory provision authorizing such relief. The High Court, while dismissing the constitutional petition, failed to appreciate these legal and jurisdictional defects. Instead of examining whether the findings recorded by the NIRC suffered from jurisdictional defects, misreading of evidence, or errors of law apparent on the face of the record, the High Court mechanically affirmed the impugned orders. The impugned judgment, therefore, warrants interference by this Court. For the foregoing reasons, leave to appeal be granted, the impugned judgment and orders be set aside, and the grievance petition filed by the private respondent be dismissed. In support of his stance, the learned counsel for the petitioner also relied upon the judgments of the Supreme Court of Pakistan in the cases of *Ikram Bari and others v. National Bank of Pakistan through President and another* (2005 SCMR 100) and *Messrs State Oil Company Limited v. Bakht Siddique and others* (2018 SCMR 1181).

5. The arguments have been heard, and the record perused.

6. The present controversy pertains to the determination of the true legal status of the private respondent, namely, whether he falls within the category of a temporary workman or a permanent workman. The adjudication of this issue is of considerable importance, as the legal characterization of a worker directly governs the nature and extent of the rights, privileges, protections, and statutory benefits available to him under the applicable labour laws. It may be observed that the labour laws governing the field do not prescribe any rigid or straitjacket formula for determining the precise legal character of a worker. Rather, such determination is to be made in the light of the facts and circumstances of

each case, keeping in view the nature of employment, continuity of service, and the governing statutory framework. In this context, paragraph I of the Schedule to the Standing Orders framed under Section 2(g) of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 (**Ordinance of 1968**) assumes considerable significance, as it classifies workmen into different categories, namely: (i) permanent, (ii) probationer, (iii) badli, (iv) temporary, (v) apprentice, and (vi) contract worker. For the purposes of resolving the present controversy, the definitions of ‘permanent’ and ‘temporary’ workmen are of pivotal relevance and are, therefore, reproduced hereunder for proper understanding, appreciation, and adjudication of the matter in issue:

*‘(b) A “**permanent workman**” is a workman who has been engaged on work of permanent nature likely to last more than nine months and has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial or commercial establishment, including breaks due to sickness, accident, leave, lock-out, strike (not being an illegal lock-out or strike) or involuntary closure of the establishment and includes a badli who has been employed for a continuous period of three months or for one hundred and eighty-three days during any period of twelve consecutive months.*

*‘(e) A “**temporary workman**” is a workman who has been engaged for work which is of an essentially temporary nature likely to be finished within a period not exceeding nine months.’*

Underlining is for emphasis.

7. A plain reading of the aforesaid Clauses reveals that the Standing Orders draw a clear distinction between a permanent workman and a temporary workman on the basis of the nature and expected duration of the work for which the employee is engaged. Under the above Clause I(b) *supra*, a workman engaged on work of a permanent nature likely to last for more than nine months, who has satisfactorily completed the prescribed probationary period of three months, acquires the status of a permanent workman. Conversely, Clause I(e) *supra* contemplates a temporary workman as one who is engaged for work of an essentially temporary nature likely to be completed within a period not exceeding nine months. The combined effect of these provisions is that where a person is employed against work of a permanent and continuing nature, he may acquire the status of a permanent workman upon the expiry of the period of nine months contemplated under Clause 1(b) *supra*, provided that he falls within the definition of the term ‘workman’ as contained in Section 2(i) of the Ordinance of 1968. In view of the foregoing statutory framework,

it may safely be concluded that the legal character of a workman is to be determined not merely by the nomenclature or designation assigned by the employer, but rather by the actual nature, continuity, and duration of the employment. Where the duties performed are of a regular, continuous, and permanent nature, and the workman remains engaged beyond the prescribed statutory period, the scheme of the law envisages and recognizes his classification as a permanent workman. In this regard, the reference may aptly be made to the Executive Engineer, Central Civil Division, Pak. P.W.D. Quetta v. Abdul Aziz and others (PLD 1996 SC 610) and the Government of Punjab and others v. Punjab Appellate Tribunal, Lahore and others (2002 SCMR 878).

8. In the present case, the private respondent remained continuously employed by the petitioner for more than two decades without any break in service. The petitioner itself unequivocally acknowledged this fact in paragraph 9 of its written reply filed before the learned Single Member, NIRC, which forms part of the record. Such prolonged, uninterrupted, and continuous engagement is wholly inconsistent with the concept of temporary employment contemplated under Clause 1(e) *supra*. On the contrary, the length, continuity, and regularity of the service rendered by the private respondent unmistakably demonstrate that he was performing duties of a permanent and continuing nature. Even otherwise, nothing available on the record suggests that the work assigned to the private respondent was seasonal, casual, project-based, or of such a temporary character as was likely to be completed within a period of nine months. Likewise, there is no material to indicate that his engagement was ever treated by the petitioner as short-term or intermittent in nature. Significantly, the petitioner also failed to show that the private respondent was ever subjected to any disciplinary proceedings or adverse action concerning the nature or continuity of his employment. In these circumstances, notwithstanding the nomenclature or description assigned to him by the petitioner, the learned fora below rightly concluded that the private respondent squarely fell within the statutory definition of a permanent workman and was, therefore, entitled to all legal protections and benefits attached to such status.

9. Alternatively, the learned counsel for the petitioner contended that, even if the grievance petition were to be accepted, the relief of

regularization claimed by the private respondent could only be granted with effect from the date of filing of the grievance petition and not from any antecedent date. We are unable to subscribe to this contention. Firstly, it may be observed that there exists no concept of 'regularization' in the strict or technical sense within the domain of labour and industrial jurisprudence. Neither the Act of 2012 nor the Ordinance of 1968 contains any provision envisaging or regulating the regularization of the services of a worker or workman. Under the aforesaid labour laws, the status of a workman is not conferred through a formal act of regularization by the employer; rather, it flows from the operation of law once the statutory conditions relating to the nature and continuity of employment are satisfied. Likewise, workmen governed by the above-referred labour laws do not fall within the definition of a civil servant as contained in Section 2 of the Civil Servants Act, 1973, where the concept of regularization has evolved through statutory provisions, service rules, and policy frameworks formulated by the executive authorities. In this regard, the Government of Khyber Pakhtunkhwa through Secretary Forest, Peshawar and others v. Sher Aman and others (2022 SCMR 406) and Federation of Pakistan through Secretary, Ministry of Law and Justice, Islamabad and another V. Fazal-e-Subhan and others (PLD 2024 SC 515). Consequently, in the realm of industrial and labour jurisprudence, there exists no independent or free-standing concept of 'regularization' in the technical sense. The legal status of a workman is to be determined in accordance with the applicable statutory provisions and the factual nature of the employment, and not on the basis of any formal order of regularization.

10. Secondly, the real question, therefore, is not whether the services of the private respondent were liable to be regularized, but whether, on the facts of the case, he had acquired the status of a permanent workman under the above laws. Therefore, we are of the view that once a worker satisfies the statutory criteria for classification as a permanent workman, such status does not flow from a subsequent order of a court or tribunal; rather, it arises directly by operation of law. Any declaration made by a court, tribunal or commission in this regard is merely declaratory in nature and serves only to recognize a legal status that has already been acquired by the workman under the law. In the present case, the concurrent findings of the NIRC and the High Court are

that the private respondent had, long ago, fulfilled the requirements prescribed under the Ordinance of 1968 for classification as a permanent workman. Consequently, the grant of benefits from the date on which such status accrued cannot be equated with retrospective regularization. It merely gives effect to the legal consequences that had already ensued under the law. Accordingly, the contention that the relief could only be granted from the date of institution of the grievance petition is devoid of merit and was rightly rejected by the High Court, which correctly observed that the direction of the NIRC to 'regularize' the service of the private respondent is to be understood as a direction to extend to him all rights and privileges guaranteed to a permanent workman under the law. The judgment relied upon by the learned counsel for the petitioner does not have any relevance to the case at hand, being distinguishable on legal and factual grounds.

11. We also find ourselves in agreement with the conclusion reached by the High Court in the impugned judgment regarding the question of limitation. The claim raised by the private respondent was not founded upon any regularization policy or a one-time service-related event; rather, it was premised on the assertion that, by operation of the provisions of the Ordinance of 1968, he had acquired the status of a permanent workman and was being unlawfully deprived of the rights and benefits attached to such status by the petitioner. The failure of the petitioner to recognize the private respondent as a permanent workman and to extend to him the benefits flowing therefrom constituted a continuing and recurring wrong, giving rise to a fresh cause of action so long as the deprivation persisted during the subsistence of the employment relationship. In such circumstances, the statutory period prescribed for filing a grievance petition cannot be construed in a manner that enables an employer to perpetuate the denial of statutory rights with impunity. Therefore, the grievance petition could not be held to be barred by limitation merely because the private respondent had remained in service for a considerable period before formally asserting his claim. We, therefore, uphold the finding of the High Court that the claim of the private respondent was maintainable and was not defeated by the law of limitation.

12. In view of the foregoing, we are of the considered opinion that the impugned judgment does not suffer from any legal or jurisdictional infirmity warranting interference by this Court. The conclusions recorded by the NIRC, as upheld by the High Court, are based on a proper appreciation of the record and are in accordance with law.

13. Resultantly, leave is refused, and the petition is dismissed. No order as to costs.

Judge

Judge

Judge

Islamabad, the
3rd June, 2026.
APPROVED FOR REPORTING
*Ghulam Raza/ **