

FCC Rules Contract Service Cannot Count Toward Seniority Without Express Legal Authority

The Federal Constitutional Court held that contract service cannot count for seniority without express law and ordered SESSI to issue a revised seniority list.

Federal Constitutional Court judgment analysis
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Case: Civil Appeal No. 103-K/2024

Court and date: Federal Constitutional Court of Pakistan | 21 May 2026

Bench: Justice Syed Hasan Azhar Rizvi and Justice Muhammad Karim Khan Agha

Result: Appeal allowed; retrospective seniority set aside; revised list directed within 60 days

The ruling in one sentence

The Federal Constitutional Court of Pakistan has held that service performed under a contract cannot be treated as regular service for seniority unless the governing law expressly permits it. Allowing the appeal in Muhammad Qutub-ud-Din and others v Province of Sindh and others, the Court set aside the retrospective seniority granted to a contractual officer of the Sindh Employees' Social Security Institution and directed SESSI to issue a revised seniority list within 60 days.

The reported judgment clarifies three connected questions of public-service law: when constitutional jurisdiction may be invoked against a statutory body whose service regulations are non-statutory; whether an alternate remedy bars a petition under Article 199; and whether retrospective regularization automatically carries retrospective seniority.

The dispute before the Court

The case arose from the appointment of Nadir Hussain Kanasro as a Social Security Officer (BS-16) in SESSI on a two-year contract in September 2002. His contract was extended from time to time, and his service was eventually regularized with effect from 31 March 2007 through an order dated 7 April 2007.

The appellants had been appointed as Social Security Officers in 2004 and appeared in SESSI's seniority lists from 2005 onward. The private respondent's name appeared only after his regularization in 2007.

Years later, the private respondent sought regularization and seniority from the date of his initial contractual appointment. Following earlier proceedings before the Sindh High Court, a committee constituted by SESSI recommended that his appointment be treated as regular from September 2002 and that he rank above the appellants. The Governing Body approved the recommendation, and SESSI issued orders in March 2017 giving effect to the retrospective benefit and posting him as Director (BS-18).

The appellants challenged those orders before the Sindh High Court. Their constitutional petition was dismissed on 4 June 2021. The Supreme Court granted leave on 15 October 2024. After the establishment of the Federal Constitutional Court through the Constitution (Twenty-Seventh Amendment) Act, 2025, the appeal stood transferred to the FCC under Article 175F(2).

Article 199 petition was maintainable against SESSI

The respondents argued that the dispute arose from a master-and-servant relationship because SESSI did not have statutory service regulations. They also argued that the appellants had not used the alternate remedy under the SESSI service regulations.

The FCC rejected both objections. It agreed with the Sindh High Court that the SESSI (Revised) Service Regulations, 2006 were non-statutory, but held that this did not make the petition non-maintainable. SESSI is a statutory body performing public functions. Its allegedly arbitrary exercise of authority, contrary to the regulations and affecting vested seniority rights, could therefore be examined under Article 199.

For this conclusion, the Court relied on *Pakistan Defence Officers' Housing Authority v Lt. Col. Syed Jawaaid Ahmed* (2013 SCMR 1707) and *Muhammad Rafi and another v Federation of Pakistan and others* (2016 SCMR 2146).

The Court also reaffirmed that the existence of an alternate remedy is not an absolute constitutional bar. The requirement to exhaust another remedy is a rule of policy, convenience, and judicial restraint. Constitutional jurisdiction may still be exercised where, among other things, fundamental rights are infringed, the alternate remedy is not adequate or equally effective, the action is without lawful authority, or the proceedings suffer from mala fide, a jurisdictional defect, or denial of natural justice. The judgment referred to *Airport Support Services v Airport Manager, Quaid-e-Azam International Airport* (1998 SCMR 2268).

Regulation 9 linked seniority to regular appointment

The central provision was Regulation 9(3) of the SESSI (Revised) Service Regulations, 2006. It provides that the seniority of a member of service is to be reckoned from the date of regular appointment.

The Court distinguished initial recruitment from regular appointment. Initial entry may be contractual, ad hoc, temporary, or officiating and does not by itself give an employee regular status. A regular appointment, by contrast, is made under the prescribed law and recruitment procedure, after completion of the required formalities and against a sanctioned post, and confers substantive status in service.

The FCC held that contractual and regular appointments are neither synonymous nor interchangeable. A contractual employee remains governed by the terms of the contract and outside the regular cadre until regularization. Without an express legal provision, the contractual period cannot be converted into regular service for determining seniority.

Retrospective regularization did not create retrospective seniority

The private respondent argued that Regulation 9(4), which expressly prohibits retrospective regularization of ad hoc appointments, did not impose the same prohibition on contractual appointments. The Court found that this argument did not answer the separate question of seniority.

Regulations 9(3) and 9(4), the Court explained, operate in distinct fields. Even if retrospective regularization were assumed to be permissible in some circumstances, it would not automatically produce retrospective seniority. Regulation 9(3) independently requires seniority to run from the date of regular appointment unless the governing law expressly provides otherwise.

No provision of the 2006 Regulations empowered SESSI's Governing Body to confer retrospective seniority on the private respondent. An administrative decision could not override or dilute the governing regulation. The Court treated accrued seniority as a valuable civil right affecting promotion, career progression, eligibility for higher posts, and other service benefits.

Official seniority lists supported the regular employees

The official record reinforced the legal conclusion. The private respondent did not appear in SESSI's seniority lists dated 1 January 2005 and 7 June 2006. His name first appeared in the list dated 25 February 2008, after his regularization from 31 March 2007.

The appellants, however, were recommended by the Departmental Selection Committee in February 2004, received appointment letters in March 2004, and appeared in the next seniority list issued in 2005 and the final list circulated in 2006. Their appointment letters did not describe their service as contractual.

The committee had questioned whether the appellants met the required age, qualification, and experience conditions, but no inquiry report or final adverse order was produced. The FCC held that tentative observations and unsubstantiated allegations could not deprive employees of vested service rights. Any defect in their appointments had to be determined through lawful proceedings and a speaking order after giving them an opportunity of hearing.

SESSI's selective treatment was arbitrary and discriminatory

The Court also noted that SESSI had rejected similar claims by five other Social Security Officers appointed through the same notification as the private respondent. Nothing showed that those similarly placed employees were later given the same retrospective seniority.

Granting the benefit selectively, without a lawful basis or reasonable classification, was held to be arbitrary and discriminatory. The Court found the differential treatment inconsistent with the guarantees of lawful treatment, equality, and non-discrimination in public service under Articles 4, 25, and 27 of the Constitution.

Earlier Supreme Court observation distinguished as obiter dicta

The Sindh High Court had relied substantially on Muhammad Aslam Awan, Advocate, Supreme Court v Federation of Pakistan and others (2014 SCMR 1289), in which the Supreme Court observed that seniority is reckoned from initial appointment rather than confirmation or regularization.

The FCC distinguished that case. It concerned the inter se seniority of Additional Judges and permanent Judges of a High Court under the constitutional scheme, not the retrospective seniority of a contractual civil-service employee under specific service regulations. The observation did not identify contractual appointment as the relevant initial appointment and had been made without reference to a particular civil-service framework.

The FCC treated that statement as an incidental observation rather than the binding ratio decidendi on the issue before it. It reaffirmed that a general observation or obiter dictum on a question not directly in issue does not become a binding rule under Article 189 for every different statutory setting.

Final order of the Federal Constitutional Court

The FCC allowed the appeal and set aside the Sindh High Court judgment dated 4 June 2021. It also set aside SESSI's orders dated 1 March and 17 March 2017.

The Court held that:

- a contractual appointment cannot be equated with a regular appointment;
- contractual service cannot be treated as regular service without an express statutory provision;
- before regularization, an employee remains outside the regular cadre and acquires no vested seniority right;
- seniority ordinarily runs from the date of regular appointment, not from an initial contractual, ad hoc, or officiating appointment, unless the governing law expressly provides otherwise;
- the regularly appointed appellants were entitled to rank above the private respondent; and
- SESSI must issue a revised seniority list within 60 days of the judgment.

The appeal was allowed with no order as to costs.

Why the judgment matters

The judgment draws a necessary line between regularization and seniority. Regularization may change an employee's present status, but it does not erase the legal character of earlier contractual service or displace rights already earned by regular employees unless legislation clearly authorizes that result.

The ruling is also important for constitutional litigation involving statutory bodies. Non-statutory service regulations do not automatically place every dispute beyond Article 199. Where a statutory authority performing public functions acts arbitrarily, exceeds its legal power, or interferes with vested service rights, the High Court may examine the action despite the existence of an alternate departmental remedy.

This commentary is independent legal analysis for research and general information. The official judgment and current statutory text should be checked before reliance in proceedings.