JUDGEMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No. 4299 of 2016

Muhammad Abdul Basit and another

VERSUS

Managing Director, Oil and Gas Development Company Ltd. and others

And

Writ Petition No. 4300 of 2016

Naseer Ahmed and another

VERSUS

Managing Director, Oil and Gas Development Company Ltd. and others

PETITIONERS BY: Mr. Muhammad Umair Baloch, Advocate

RESPONDENTS BY: Mr. Ghulam Mustafa Qureshi, Advocate

DATE OF DECISION: 15.09.2026

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***AYYAZ SHAUKAT, J*:-** Through this consolidated judgment, Writ Petition Nos. 4299 and 4300 of 2016 are being decided together because the petitioners' separately filed representations were rejected through separate but identically worded orders, each dated 15.12.2015. The petitions rest on substantially identical facts and seek the same relief. The petitioners call in question the rejection of their respective representations and seek a direction to the Oil and Gas Development Company Limited **("OGDCL")** to place them, for the purposes of basic pay, at par with Muhammad Umair Khan and other employees whose services were regularized in 2009 with protection of the pay drawn by them during their preceding contractual employment.

2. The petitioners in W.P. No.4299/2016, namely Muhammad Abdul Basit and Faisal Inam, were inducted as Assistant Technician (Instrument) trainees on 09.07.2001. Upon completion of their training, their services were regularized as Assistant Technicians (Instrument) in BPS-12, and their pay was fixed at Rs.1,960/- per month. Their pay grade was subsequently revised

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from BPS-12 to NMG-12. Likewise, the petitioners in W.P. No.4300/2016, namely Naseer Ahmed and Muhammad Ismail, were inducted as Assistant Technician (Instrument) trainees on 24.07.2001. Upon completion of their training, their services were regularized as Assistant Technicians (Instrument) in BPS-12, and their pay was fixed at Rs.2,140/- per month. They were later promoted as Technical Officers (EG-II). The respondents maintained that the initial pay of both sets of petitioners was fixed in accordance with Rules 50 and 56(a) of the OGDCL Employees Service Rules, 2002, and that each petitioner was also granted one advance increment.

3. The controversy arose when Muhammad Umair Khan and 28 other employees, after being engaged on contract on a market-based package, were brought into the regular cadre on 06.02.2009 under clause 7.23 of the 20th Memorandum of Settlement **("MOS")**. Their existing contractual pay was protected. According to the petitioners, Muhammad Umair Khan, although junior and ultimately placed in the same cadre/scale, drew basic pay of Rs.12,700/- whereas their own basic pay was Rs.7,177/-. They regarded this difference as unlawful discrimination and sought the removal of the anomaly.

4. The petitioners separately submitted representations for redressal of their respective grievances. Each representation was rejected through a separate but identically worded order dated 15.12.2015. The said orders record that the Management examined the advertisements, letters of initial employment, pay fixation, earned promotions, and the benefits extended to the respective batches, and found that each batch had received the benefits attached to its own mode and terms of induction; that the pay of the contractual appointees had been fixed in accordance with their accepted terms; and that the salaries of employees directly appointed in the regular cadre could not be equated with those of a different batch initially engaged on contract. Hence, these petitions.

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5. Learned counsel for the petitioners submitted that the petitioners are senior to Muhammad Umair Khan, perform the same or substantially similar duties, and were serving in the same scale when the latter's services were regularized. It was argued that allowing a junior employee substantially higher basic pay, without stepping up the pay of his seniors, offends Articles 4 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973 **("the Constitution")**. Reliance was placed on the judgment dated 25.05.2016, rendered by this Court in ***Alfraz Shahzad v. Managing Director, Oil & Gas Development Company Ltd. (W.P. No.1420/2015)***, whereby a similar claim against OGDCL was allowed and the principle that similarly placed employees should not be compelled to institute separate proceedings for the same relief was reiterated.

6. Conversely, learned counsel for the respondents raised a preliminary objection to the maintainability of the petitions. He submitted that the OGDCL Employees Service Rules, 2002 are non-statutory; that the petitioners admittedly fall within the definition of 'workman' under the Industrial Relations Act, 2012; and that any grievance regarding their terms and conditions of employment had to be agitated before the competent forum under that Act. On merits, he submitted that the petitioners and the persons cited as comparators constitute distinct classes. The petitioners entered regular service immediately after training and continuously enjoyed regular-service benefits, including leave, medical coverage, annual increments, MOS increases, service security, promotion, continuity of service and pension. Muhammad Umair Khan and the other members of his batch, on the other hand, were initially appointed on contract on a market-based fixed salary, without annual or MOS increases, pension, service security, promotion or the full range of regular-service benefits. Their existing pay was protected only when their services were regularized under the 20th MOS. It was further pointed out that I.C.A. No.518/2016, filed by OGDCL against the judgment dated 25.05.2016 passed by the learned Single Judge in W.P. No.1420/2015,

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was allowed by a learned Division Bench of this Court vide judgment dated 10.02.2022, and the said judgment was consequently set aside.

7. The following questions arise for determination: (i) whether, in view of the nature of OGDCL's service rules and the remedy available under the Industrial Relations Act, 2012, the petitions are maintainable in their present form; and (ii) whether the protection of the pre-regularization contractual pay of Muhammad Umair Khan and his batch creates unconstitutional discrimination, entitling the petitioners to identical basic pay and consequential benefits.

8. It is not disputed in the pleadings that OGDCL is an industrial and commercial undertaking, that the petitioners belong to the workmen category, and that their terms and conditions are regulated, *inter alia,* through Memoranda of Settlement concluded under the industrial-relations regime. The respondents have specifically pleaded that the OGDCL Employees Service Rules, 2002 are non-statutory and that the petitioners could invoke the remedy available under section 33 of the Industrial Relations Act, 2012 before the National Industrial Relations Commission **("NIRC")**. These foundational assertions have not been displaced by reference to any statutory provision conferring upon the service rules the force of law. The OGDCL Employees Service Rules, 2002 were declared to be non-statutory by this Court in ***Zahid Rafique vs. OGDCL through its Managing Director and others*** **(Writ Petition No.3745 of 2019)** while relying on an earlier judgment of this Court in **Muhammad Azhar Khattak vs. OGDCL, etc. (Writ Petition No.1407 of 2015)**. The judgment passed in **Zahid Rafique** was assailed before the Hon'ble Supreme Court through ***Zahid Rafique v. OGDCL through its Managing Director, Islamabad, etc.*** **(C.P. No.4826/2019)**; however, vide order dated 17.11.2022, the petition was dismissed and the judgment of this Court was maintained. This is in line with the consistent view of the Hon'ble Supreme Court that where the terms and conditions of employment

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are governed by non-statutory rules, the relationship between the parties is that of master and servant, and its incidents cannot be enforced through a constitutional petition: ***Pakistan International Airline Corporation v. Tanweer-ur-Rehman (PLD 2010 SC 676)***; ***Pakistan Telecommunication Company Ltd. v. Iqbal Nasir (PLD 2011 SC 132)***; ***Pakistan Defence Officers Housing Authority v. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707)***; **and** ***Sui Southern Gas Company Ltd. v. Saeed Ahmed Khoso (2022 SCMR 1256)*.**

9. A constitutional petition is not a substitute for the special remedy created for adjudication of an individual grievance of a workman. The present controversy requires examination of the petitioners' conditions of employment, successive MOS benefits, the terms of the contracts, the legal effect of clause 7.23 of the 20th MOS, and the respective pay-fixation exercises. These are matters lying within the industrial-relations framework and, in material part, involve factual comparison. No reason has been shown why the forum specifically established for such grievances could not provide an effective remedy. The petitions are, therefore, liable to be dismissed on the ground of maintainability and availability of an adequate statutory remedy.

10. There is yet another aspect of the matter. The petitioners' claim relates to their terms and conditions of service governed by non-statutory service rules and settlements and is not founded upon any statutory provision. Even where a public-sector company is amenable to constitutional review in respect of a public duty or a violation of a fundamental right, every dispute arising from the contract or conditions of employment of its workmen does not, for that reason alone, become enforceable in constitutional jurisdiction. Whether such a company performs functions in connection with the affairs of the Federation is a distinct question, tested by the functional criteria laid down in ***Salahuddin v. Frontier Sugar Mills and Distillery Ltd.*** **(PLD 1975 SC**

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244) and reiterated in ***Muhammad Mubeen-us-Salam v. Federation of Pakistan*** **(PLD 2006 SC 602**) and **Tanweer-ur-Rehman** (supra); amenability, however, does not make every dispute over non-statutory terms of employment enforceable under Article 199 of the Constitution. The mere reliance upon Articles 4 and 25 cannot dispense with the need to establish that the impugned action is without lawful authority, arbitrary, or founded upon a classification having no rational nexus with the object sought to be achieved. The rule is not applied mechanically: where the terms of employment are shown to enjoy a statutory source, a constitutional petition may lie, as was held in ***Masood Ahmed Bhatti v. Federation of Pakistan*** **(2012 SCMR 152)** in respect of the employees transferred to the Pakistan Telecommunication Company Limited. No such statutory source has, however, been shown in the present cases.

11. Even otherwise, the claim does not succeed on merits. Article 25 commands equal treatment of persons similarly situated; it does not require identical treatment of persons whose relevant circumstances are materially different. It is well settled that Article 25 permits reasonable classification: persons in like circumstances must be treated alike, but a classification founded on an intelligible differentia having a rational nexus with its object is not discriminatory. Reference may be made to ***Government of Balochistan v. Azizullah Memon*** ***(PLD 1993 SC 341)*** and ***I.A. Sharwani v. Government of Pakistan*** ***(1991 SCMR 1041)***, where the grouping of government employees into separate categories for the grant of monetary benefits was upheld against a challenge of arbitrariness. Designation, nature of duties, or placement in the same scale at a later stage is not, by itself, conclusive. The source and terms of induction, status before regularization, benefits already enjoyed, and the legal basis of pay fixation are relevant features when the validity of a pay distinction is examined.

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12. The petitioners and Muhammad Umair Khan did not enter regular service on identical terms. The petitioners were inducted as trainees and, upon completion of training, were appointed in the regular cadre. From that stage onward they enjoyed the benefits of regular employment. Their pay was initially fixed under the prevailing scale and was thereafter increased through annual increments and successive MOSs. The record supplied by the respondents also shows access to leave, broader medical coverage, promotion, continuity of service, pension and service security.

13. Muhammad Umair Khan and the other members of his batch followed a different route. After training, they were engaged on contract in 2005 on a fixed market-based package of Rs.10,000/- with limited benefits. For the contractual period they did not enjoy the full benefits of regular employment and did not receive the periodic pay increases available to the regular workmen. Their regularization took effect on 06.02.2009 pursuant to clause 7.23 of the 20th MOS. At that transition, their existing contractual pay was protected with the approval of the competent authority. The respondents explain, with reference to the Pay Fixation Committee, that such protection partly compensated for the period during which the batch had remained outside the regular cadre and without the accompanying benefits. The distinction between the two modes of service is real and not nominal: regularization of a contractual employee constitutes a fresh appointment into the stream of regular service (see ***Province of Punjab v. Dr. Javed Iqbal*** (**2021 SCMR 767)**), and the differences between contractual and regular employment, including as to duration, benefits and statutory protection, are material (see ***Mohsin Raza Gondal v. Sardar Mahmood*** **(2025 SCMR 104)**). Although those judgments arose in the civil-service context, the reasoning is instructive here.

14. Pay protection on movement from one legally distinct status to another is not equivalent to the grant of an arbitrary higher starting pay to

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one member of an otherwise homogeneous cadre. It preserves an amount already lawfully drawn and avoids a reduction upon regularization. The petitioners did not suffer such a transition or any reduction requiring protection. Their earlier entry into the regular cadre also conferred advantages that were unavailable to the comparator batch during its contractual service. The difference in treatment therefore rests upon an intelligible distinction directly connected with the object of the pay-fixation decision. Article 25 does not require that one component of two different employment packages be isolated and equalized while the corresponding differences in tenure, benefits, progression and security are disregarded.

15. The plea that a senior can never draw less basic pay than a junior is stated too broadly. A difference may arise from protected pay, prior contractual remuneration, advance increments, personal pay, a different mode of recruitment, or other legally recognized benefits. Unless the governing rules provide for stepping up of pay in the circumstances established, seniority alone does not create an automatic right to absorb every such difference. The petitioners have not identified any statutory rule or clause of the applicable MOS that directs stepping up of their pay because the pre-regularization pay of a later entrant was protected.

16. The petitioners' reliance on the judgment dated 25.05.2016, passed in W.P. No.1420/2015, is misplaced. The said judgment was challenged by OGDCL through I.C.A. No.518/2016, which was allowed by a learned Division Bench of this Court vide judgment dated 10.02.2022, and the judgment passed by the learned Single Judge was set aside. Consequently, the judgment in W.P. No.1420/2015 no longer holds the field and cannot support the petitioners' claim. Even otherwise, the present record demonstrates that the petitioners and the employees cited as comparators were inducted through different modes and enjoyed different benefits before 2009. The protection of the contractual pay of the latter group upon regularization under clause 7.23

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of the 20th MOS was based on this material distinction. Moreover, the principle enunciated in ***Hameed Akhtar Niazi v. Secretary, Establishment Division*** **(1996 SCMR 1185)** arose in the context of civil servants, and the Hon'ble Supreme Court has declined to extend it to employees whose terms of service are non-statutory (see ***Pakistan International Airline Corporation v. Syed Suleman Alam Rizvi (2015 SCMR 1545)***. The principle of extending the benefit of a judgment to similarly placed employees is, therefore, not attracted to the present cases.

17. The separate but identically worded impugned orders dated 15.12.2015 are brief but identify the decisive basis for rejection: the petitioners and the cited employees belonged to different batches, were inducted on different terms, and received benefits in accordance with their respective employment arrangements. In view of the admitted and documented distinctions discussed above, the said orders cannot be characterized as arbitrary, discriminatory or without lawful authority.

18. For the foregoing reasons, both writ petitions are **dismissed**. The separate but identically worded impugned orders dated 15.12.2015 do not warrant interference in constitutional jurisdiction. There shall be no order as to costs.

19. It is clarified that the observations made herein are confined to adjudication of the constitutional claim raised in these petitions. If any remedy remains available to the petitioners under the applicable industrial relations law, its availability and limitation shall be determined by the competent forum strictly in accordance with law.

(AYYAZ SHAUKAT)
JUDGE

Saeed.

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